

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.5642 of 2015 (O&M)

Date of decision : 19.09.2017

Raj Singh (since deceased) through his LRs

...Appellant(s)

Versus

Hukam Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Baldev Singh, Advocate for the appellant(s).

ANIL KSHETARPAL, J. (ORAL)

Defendant is in appeal against the judgment passed by the learned Additional District Judge, Jhajjar.

The plaintiff had filed a suit for permanent injunction. The plaintiff was claiming that as per the mutual settlement, half of the property in dispute has fallen to his share and that portion falls towards east side of the property.

The learned trial Court appointed a Local Commissioner. The Local Commissioner visited the spot and with the help of the respectable members including the son of the defendant-appellant, had identified the property. The son of the appellant had pointed out various items/trees/small construction which he claimed that it belongs to them. On the basis thereof, Local Commissioner has submitted his report and informed the Court that the eastern portion is in the possession of the plaintiff whereas western portion is

in the possession of the defendant.

The learned First Appellate Court after appreciating the evidence available on the file including the oral evidence led by the parties had granted the injunction restraining the defendant from interfering in the possession of the plaintiff with respect to the portion covered by letters EFCB.

There is no dispute between the parties that they have given equal portion of the property.

Learned counsel for the appellant has submitted that the Local Commissioner cannot be delegated the power of determining the factum of possession. There is some substance in the argument of the learned counsel. In the present case, the Local Commissioner has not determined the possession of the parties. He has only reported about the factual position as available on the site. In fact, he had reported the factual position on the basis of the information supplied by the son of the appellant. First Appellate Court has further relied upon the oral evidence led by the parties.

In view of the discussion made above, I do not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid order.

19.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No