

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.55 of 1988 (O&M)
Date of Order: 13.09.2018

Piyara Singh

..Appellant

Versus

Surjit Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate, with
Mr. Akshit Chaudhary, Advocate, and
Ms. Eesha Khanna, Advocate,
for the appellant.

Mr. Bhavnik Mehta, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Learned first appellate court while passing the impugned judgment has reversed the judgment of the learned trial court on the ground that the previous judgment of the first appellate court dated 22.09.1984 was only a limited remand and the trial court was not having jurisdiction to re-decide the suit. Operative part of the judgment passed by the first appellate court on 22.09.1984 is extracted as under:-

“In view of the findings arrived at on different issues by this court, the judgment and decree of the trial court is hereby set aside. However, the case is to be remanded for purposes of demarcation by appointment of a new Local Commissioner in the light of the above observations for demarcation of khasra no.4018/2299 and for fresh decision in accordance with law. The parties are left to bear their own costs of this appeal and are directed to put in appearance before the court below

on 10.10.1984.”

It is not in dispute that after the matter was remanded back, learned trial court re-decided the suit after re-appreciation of evidence including demarcation of the area, vide judgment dated 10.10.1986.

However, learned first appellate court while examining the appeal against judgment dated 10.10.1986, held that the learned trial court had no jurisdiction to re-appreciate the evidence and re-examine the facts of the case on the ground that the remand to the trial court vide order dated 22.09.1984, operative part whereof has been extracted above, was only limited remand.

Learned counsel for the respondent also admit that the reasons assigned by the first appellate court on this aspect of the matter are erroneous.

Keeping in view the aforesaid facts, the judgments passed by the learned first appellate court, with consent, is set aside. The case is remitted back to the learned first appellate court to re-decide the case on merits.

Keeping in view that the appeal has remained pending for 30 years, learned first appellate court is requested to decide the appeal within a period of 6 months from the date of receipt of order passed by this Court.

Parties through their counsel are requested to appear before the court on 03.10.2018, at 10.00 AM.

September 13, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No