

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.3820 of 1999 (O&M)  
Date of Order:22.10.2018

Mukh Ram Saini

..Appellant

Versus

Narain Singh and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Sachin Mittal, Advocate, and  
Mr. Akshat Mittal, Advocate,  
for the appellant

Mr. H.S.Hooda, Sr. Advocate, with  
Mr. Naveen Kashyap, Advocate, and  
Mr. C.S.Singh, Advocate,  
for the respondents

**ANIL KSHETARPAL, J(Oral)**

This appeal has been filed by the defendant-appellant against the judgment passed by the courts below.

The first appellate court has not decided the appeal in accordance with Section 96 of the Code of Civil Procedure.

Learned first appellate court after noticing contentions of learned counsel for the parties, has recorded as under:-

*“The Ld. Counsel for the appellant/defendant argued that the defendant is a bonafide purchaser of the suit land for valuable consideration as per sale deed Ex.D3. However, he has not been able to show any document of title relating to the area sold by Ram Kishan to the defendant. So the findings of trial court on this issue are*

*affirmed.”*

Learned trial court had framed the following issues:-

- “1. Whether the plot/portion ABFE is the part and parcel of Harijan Chaupal as alleged in the plaint?OPP.*
- 2. Whether the suit is not maintainable in the present form?OPD.*
- 3. Whether the plaintiffs have no locus standi to file the present suit?OPD.*
- 4. Whether the plaintiffs are estopped from filing the present suit by their act and conduct, omission acquiescence, latches and admission?OPD.*
- 5. Whether the defendant is bonafide purchaser of the suit land for valuable consideration as alleged?OPD.*
- 6. Relief.”*

Learned first appellate court without even appreciating the basic fact that the plaintiffs have to stand on their own legs and are to prove their case, shifted the onus on the defendants while deciding the first appeal. Still further there are two lay out plans, one filed by the plaintiffs and second filed by the defendant. Defendant claims that there is a 3 feet wide passage in between his property, which is claimed to be part of Harijan Chaupal by the plaintiffs. Both the courts below without even getting the status report have chosen to decree the suit filed by the plaintiffs. The inference drawn by the learned trial court that since the property depicted in Ex.D4 through letters B1, B2, A1 and A2 is not being claimed, therefore

property depicted by letters P,X,Y,Z, is also part of Harijan Chaupal, is clearly erroneous.

Since, this court is not intending to finally decide the controversy and wishes to remit back the case to the trial court to re-decide the matter, therefore, any further finding may prejudice the case of the parties.

Keeping in view the aforesaid facts, judgments passed by both the courts below are set aside. Learned trial court would re-decide the matter after appointing a Local Commissioner, who would carry out the local investigation and submit a report to the court about the correct position on the spot. Any observations made by this court would not prejudice the trial court while re-deciding the suit.

Parties through their counsels are directed to appear before the trial court on 02.11.2018.

All the misc. applications are disposed of in view of the judgment passed above.

**October 22, 2018**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No