

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No. 64 of 2013 (O/M)
Date of decision : 23.4.2018

Ram Kishan

..... Appellant

Versus

Joginder Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Pritam Saini, Advocate,
for appellant.

Mr. O.P.S. Tanwar, Advocate,
for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH J. (ORAL)

Impugned in present Second Appeal against Order is judgment dated 14.10.2013, passed by learned Additional District Judge, Kurukshetra, vide which while hearing appeal against judgment and decree dated 29.4.2011, passed by learned Additional Civil Judge (Senior Division), Kurukshetra, case was remanded back to trial Court in the light of judgment dated 9.11.2009, passed by this Court in RSA No. 1927 of 2009, titled as *Joginder Singh and another Versus Ram Kishan*, while holding that there is no substantial compliance of this Court.

I have heard learned counsels for both the parties and have also carefully gone through the file.

It comes out that plaintiffs had filed a suit for possession claiming that land measuring 4 marlas out of total land measuring 12 marlas has been encroached upon by defendant. Earlier suit was dismissed by then

SAO No. 64 of 2013 (O/M)

Civil Judge (Junior Division), Kurukshetra, on 28.3.2007 and appeal was also dismissed on 6.3.2009 by learned Additional District Judge, Kurukshetra, against which RSA No. 1927 of 2009, titled as *Joginder Singh and another Versus Ram Kishan*, was filed before this Court. This Court, while deciding RSA No. 1927 of 2009 on 9.11.2009, observed as under :-

'12. The Local Commissioner, who demarcated the land, was examined, by the plaintiffs/appellants, but his report, did not find favour of the Courts below, on the ground that the same, was not, in accordance with the relevant rules and regulations, as three permanent points, had not been fixed by the Local Commissioner. In my considered opinion, once, the Courts below, did not accept the report of the Local Commissioner, it was their duty, to appoint a fresh Local Commissioner, for the purpose of demarcation of the land, to find out, as to whether, defendant/respondent, had encroached upon any area of plaintiffs/appellants. The Court, is after all, required to impart justice, without being swayed by the hyper-technicalities. Whether a party filed an application for demarcation of the land, or not, was hardly of any consequence. Since the report of the Local Commissioner, was most essential, for the purpose of finding out, as to whether, the defendant/appellants, had encroached upon any area of the plaintiffs/appellants, and in the absence whereof, the controversy, between the parties, could not be effectively and completely adjudicated upon, the Court, was required to order the appointment of a fresh Local Commissioner.'

SAO No. 64 of 2013 (O/M)

While remanding back the case to trial Court for appointment of a Local Commissioner of the rank of Tehsildar (Revenue), following direction was given :-

'14. For the reasons, recorded above, the appeal is accepted, with no order, as to costs. The judgments and decrees of the Courts below, are set aside. The case is remitted back, to the trial Court, with a direction, to appoint a Local Commissioner of the rank of Tehsildar (Revenue), for the purpose of demarcation of the land, in dispute, in accordance with the relevant rules and regulations, and the instructions, issued by the Financial Commissioner to Government Haryana, from time to time. After the report of the Local Commissioner, is received, objections to the same, shall be filed by the aggrieved party/parties, and thereafter, he shall be examined. After the examination of the Local Commissioner, an opportunity, shall be afforded, to the defendant/respondent, to lead his evidence, in rebuttal, thereto. Thereafter, the trial Court, shall decide the case afresh, on the basis of the report, the evidence of the Local Commissioner, and the evidence already recorded. The fees of the Local Commissioner, shall be borne, by the plaintiffs/appellants. The parties are directed to appear in the trial Court on 07.12.09, at 10:00 A.M. Sharp, for further proceedings.'

Accordingly, Local Commissioner was appointed. The Court of learned Additional Civil Judge (Senior Division), Kurukshetra, vide judgment dated 29.4.2011, again dismissed suit. In appeal, learned

SAO No. 64 of 2013 (O/M)

Additional District Judge, Kurukshetra, was of the view that once the demarcation (Ex.PW5/B) was not found to be proper by trial Court and was not found to be as per instructions of Financial Commissioner, same was of no consequence because Local Commissioner did not affix pucca point as required under rules. Therefore, it was held that once the report of Local Commissioner is not accepted, it was the duty of trial Court to appoint fresh/another Local Commissioner.

I have examined report of Local Commissioner (Ex.PW5/B) dated 24.2.2010. In the report, there is a mention that all the four points of khasra No. 14/17/2 were affixed. The pillars were affixed. Accordingly, Local Commissioner found that defendant encroached upon 76 sq. yards. approximately 2 ½ marlas as per site plan (Ex.PW5/C).

The learned counsels for parties have not disputed that land is in abadi and there is a construction on the sides of the property. In these circumstances, trial Court was required to consider whether it was possible to find pucca points on at least three sides? Only then it can be held that said pucca points have not been affixed. If it is in abadi, it may not be possible for any Local Commissioner to find three pucca points to conduct the demarcation. In these circumstances, Court was to fall back upon the oral evidence, site plan and documents attached with the file. In these circumstances, order of remand is held to be bad in law and is set aside. The matter is remanded back to the successor Court of learned Additional District Judge-I, Kurukshetra, with a direction to rehear the appeal on merits, take into consideration the entire evidence, documents attached with file, report of both Local Commissioners and reappraise same and record findings thereon on merits on each issue to find out as to whether findings of

SAO No. 64 of 2013 (O/M)

lower Court are justified or are liable to be reversed? Consequently, appeal is allowed to the abovenoted extent. Both parties are directed to put in appearance before learned Additional District Judge-I, Kurukshetra, on 16.5.2018 at 10:00 AM. Lower appellate Court is directed to decide the appeal within three months from the date of receipt of certified copy of this order. Registry is directed to remit back the original file to lower appellate Court alongwith copy of this order. Since main case has been allowed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

23.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No