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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 23<sup>rd</sup> May, 2018*

+ **RFA 598/2016**

VINOD GOEL

..... Appellant

Through: Mr. Surender Deswal, Advocate.  
(M-9416131300)

versus

MAHESH YADAV

..... Respondent

Through: Mr. Prag Chawla, Advocate with  
Respondent in person.  
(M-9810048366)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. The appeal arises out of the impugned judgement and order dated 25<sup>th</sup> July, 2014 by which the suit of the Appellant/Plaintiff (*hereinafter, 'Plaintiff'*) was dismissed by the Trial Court.
2. The Plaintiff filed a suit for possession and mesne profits based on Agreement to sell dated 16-22<sup>nd</sup> June, 1997. The Plaintiff claims to be working with the Indian Air Force. He avers that he is the owner of the plot admeasuring 200 sq. yds. bearing no.34, Block B, Swaroop Nagar, Libaspur, Delhi (*hereinafter, 'suit property'*) and that the Respondent/Defendant (*hereinafter, 'Defendant'*) illegally trespassed into the suit property.
3. On the other hand, learned counsel for the Defendant submits that the plot occupied by his client is different from the suit property which the Plaintiff had purchased and there is confusion as to the khasra number, which has been created.
4. The Plaintiff relies upon the fact that in a litigation involving the same

Defendant, being Suit No.2198/1999 titled as ***Mahesh Yadav Vs. Aatma Ram Gupta & Anr***, a Local Commissioner was appointed by the Delhi High Court on 7<sup>th</sup> December, 1999. The said Local Commissioner, Mr. Y.D. Nagar executed the said commission and filed a report that the suit property is 200 square yards and not 150 square yards as alleged by the Defendants. The Plaintiff relied on this report to claim that he had purchased the plot of 200 square yards, though the wrong khasra number was mentioned due to a typographical error. The Trial Court, in paragraph (f) observed as under: -

*“(f) Admittedly Sh. Y.D.Nagar was appointed as Local Commissioner by the Hon'ble High Court in the suit of defendant (herein) and he inspected the site and give his report Ex. PW1/21. PW-1 deposed that the report of L.C. Ex. PW-1/21 is in regard to suit property i.e., plot no. 34 admeasuring 200 sq. yards, on the contrary defendant deposed that local commissioner Y.D.Nagar inspected his plot no. 33 and he included the ingress and engress area in the plot and therefore his report shows area of plot as 200 sq. yards. Admittedly, neither plaintiff nor defendant has examined the local commissioner Sh. YD. Nagar to prove his report Ex. PW-1/21. Under these circumstances, report of Local Commissioner Ex, PW1/21 cannot be taken into consideration.”*

5. Thus, the Trial Court did not take the Local Commissioner's report into consideration on the ground that neither party had examined the Local Commissioner, Mr. Y.D. Nagar.

6. This Court is of the opinion that this approach is contrary to law inasmuch as a Local Commissioner who is appointed by the Court is an officer of the Court. Order XXVI Rule 7 and 9 clearly provides as under: -

***“7. Return of commission with depositions of witnesses — Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the returned thereto and the evidence taken under it shall [subject to the provisions of rule 8] from part of the record of the suit.***

***9. Commissions to make local investigations — In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:***

***Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”***

7. It is the settled proposition in law that when a Commissioner is appointed, he acts as the officer of the Court and it is not necessary for the Commissioner to be examined. This is clearly laid down by the Supreme Court in ***Misrilal Ramratan & Ors. Mansukhlal & Ors. v. A. S. Shaik Fathimal & Ors., 1995 Supp (4) SCC 600***, wherein the Court held as under:

***“It is now settled law that the report of the Commissioner is part of the record and that therefore the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since it is part of the record of the case.”***

8. Even this Court, recently in ***Levis Strauss v. Rajesh Agarwal [RFA***

***127/2007 decision dated 3<sup>rd</sup> January, 2018]***, held as under:

*“11. The rationale behind Order 26 Rule 10 (2) of CPC is clear i.e. the Commissioner is appointed as a representative of the Court and evidence collected by the Commissioner along with the report of the Commissioner would be evidence in the suit, subject to any objection raised by any party. If any party has any objection to Commissioner’s report or to the evidence, such party has an option to examine the Commissioner personally in open Court. Such examination is however, neither compulsory nor required especially in cases where the party does not challenge the report.”*

9. Mr. Prag Chawla clearly concedes that there may be no requirement to examine the Local Commissioner once the Commissioner is appointed by a Court.

10. Under these circumstances, since the Commissioner had visited the suit property and had submitted the report, it is deemed appropriate that the matter is remanded back to the Trial Court to decide the matter afresh after taking into consideration the report of the Local Commissioner, Mr. Y.D. Nagar dated 5<sup>th</sup> January, 2000 in Suit No.2198/1999.

11. No further evidence either documentary or oral would be led in the matter. The Trial Court would decide the suit afresh after considering the report of the Local Commissioner and in accordance with law. None of the findings in the impugned judgement would bind the Trial Court which will hear the matter afresh. The impugned judgement is set aside in these terms.

12. The appeal is disposed of with these observations. The Trial Court record be sent back.

13. Under the circumstances, the Trial Court is requested to dispose of the suit within a period of three months.

14. The matter be listed before the Trial Court on 4<sup>th</sup> July, 2018.

**PRATHIBA M. SINGH**  
**JUDGE**

**MAY 23, 2018**

*Rekha*

