

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

**SAO No.2 of 2019 (O&M)
Date of Decision: January 10, 2019.**

Bhagwant Singh

.....APPELLANT(s).

VERSUS

Janak Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Salar, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Plaintiff-respondent No.1 Janak Singh filed suit for mandatory injunction for direction to the defendants to remove the encroachment on the public passage as shown in site plan attached with the plaint. The suit was dismissed by the lower Court. In appeal, learned first Appellate Court remanded the case with direction to the lower Court to depute some revenue officer for demarcation of the street as per Rules and decide the same afresh. The relevant findings of the first Appellate Court contained in para 21, 22 and 23 are reproduced as follows:-

“21. In the present case, the revenue official PW-4 Balbir Singh has admitted that he neither measured the length of street nor he find pacca points at the spot. The village map prepared at the time of last settlement was also not taken into consideration while preparing the

demarcation report. In the totality of the circumstances, the aforesaid demarcation reports cannot be taken into consideration to fasten any liability on any of the party.

22. In ***Ashok Kumar Vs. Ram Asra (supra)*** Hon'ble High Court of Punjab and Haryana has held that the report of Local Commissioner is any manner deficient, it ought to have appointed another Local Commissioner or referred the matter to a revenue officer for demarcation of the plots as per the provisions of the High Court Rules and Orders.

23. In view of the authoritative pronouncement of Hon'ble High Court of Punjab and Haryana, this Court is of the considered view that suit of the plaintiff cannot be dismissed on the ground that PW-4 Balbir Singh did not conduct the demarcation, as per the High Court Rules and Orders. The judgments cited by the learned counsel for defendants is distinguishable from the facts of the present case. Therefore, the present case is hereby remanded back to the learned trial Court to depute Local Commissioner a revenue official to demarcate the street as per the High Court Rules and Orders. Accordingly, the judgment and decree passed by the learned trial court is hereby set-aside and the learned trial court is directed to decide the matter afresh after deputing a revenue official to demarcate the street and proceed further in accordance with law after giving opportunity to both the parties.”

The dispute in this case is regarding the public passage. The first Appellate Court has observed that the suit cannot be dismissed on the ground that local commissioner has not conducted demarcation as per provisions of High Court Rules and Orders. The onus is on the Court either to direct the same local commissioner to conduct the demarcation as per

Financial Commissioner or to appoint some another local commissioner to obtain a proper report. The issue raised by plaintiff and defendants regarding the passage in question is required to be finally adjudicated. The first Appellate Court has rightly observed that instead of dismissing the suit of the plaintiff on the ground that local commissioner has not conducted the demarcation as per provisions of High Court Rules and Orders, a fresh report should be obtained and matter be decided finally.

On perusal of the order of the first Appellate Court, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 10, 2019.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No