

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

**SAO No.37 of 2019 (O&M)
Date of Decision: April 29, 2019.**

Rameshwar

.....APPELLANT(s).

VERSUS

Prabhu Ram

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.K. Agnihotri, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Respondent-plaintiff Prabhu Ram filed suit seeking relief of mandatory injunction, directing the appellant-defendant to remove the encroachment measuring 9' x 49'½" (approximate 2 marlas) and also for possession of the same.

Learned trial Court dismissed the suit on two grounds; firstly that the demarcation report relied upon by the respondent-plaintiff Ex.PW3/B was defective and the encroached portion was in possession of Naresh and Ashok sons of defendant. Taking note of the above facts, learned first Appellate Court accepted the appeal filed by respondent-plaintiff and remanded the case with the observations as follows:-

“It appears that the plaintiff was non-suited on two counts; firstly, that the demarcation was defective and;

secondly, because Naresh and Ashok, who were in actual possession of the property, were not arrayed as party despite specific objection in that behalf taken in the written statement. To my mind, this was an error committed by the learned lower court. Once it had found that the demarcation was not properly conducted in accordance with the procedure laid down in the Rules and Orders of the Punjab and Haryana High Court, it was incumbent upon the court to have granted an opportunity to the plaintiff to obtain fresh demarcation. Needless to say that this is the only way that rights of the parties could be adjudicated. If the property in dispute was in thickly populated area, the best way was to order digital demarcation. Similarly, if the court was of the opinion that Naresh and Ashok were necessary parties, it ought to have afforded an opportunity to the plaintiff to join them. Without giving such an opportunity the suit could not have been dismissed. Therefore, the findings of the learned lower court on issue No.1 are set aside and as a consequence the appeal is allowed. While setting aside the judgment under challenge the court remands the case to the learned lower court with direction to afford an opportunity to the plaintiff to array Naresh and Ashok as parties and thereafter to decide the matter afresh after getting demarcation of the land conducted with the help of digital means.”

Plaintiff has alleged encroachment over his land and the trial Court was required to record a definite finding as to whether the plaintiff has been able to prove his plea or not. If the demarcation was found to be defective, fresh demarcation could be sought and opportunity can be afforded to the plaintiff to join the parties deemed as necessary by the trial

rightly ventured into the objections taken by learned trial Court while dismissing the suit. Order passed by first Appellate Court remanding the case for fresh decision calls for no interference by this Court.

This appeal has no merits.

Dismissed.

April 29, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***