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

**SAO No. 05 of 2009 (O&M)**
**Date of Decision: May 14, 2019**

Om Parkash

.....APPELLANT

VERSUS

Udey Singh and others

.....RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. N.C.Kinra, Advocate
for the appellant.

Mr. R.N.Lohan, Advocate
for the respondents.

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**SURINDER GUPTA, J.(Oral)**

Heard.

The plaintiff-respondent No.1 filed suit claiming the relief as follows:

*Suit for permanent injunction restraining the defendants from raising constructions or making encroachment in any other manner upon gair mumkin Rasta comprised in Khewat No. 488 Min, Khatoni No. 642, Min. Khasra No. 476(4-11), measuring 4 Kanals 11 Marlas, situated in revenue estate of Vill. Julana, Teh. & Distt. Jind vide jamabandi of the year 1983-84 and also restraining the defendants from causing obstruction, hindrance or blockade in the said gair mumkin Rasta No. 476, either now or in future and further for mandatory injunction for demolition and removal of all the illegal construction (Shops) over Khasra No. 476 at the costs and risks of defendants raised during the pendency of the suit.*

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Suit was decreed by the Civil Judge (Jr. Divn.), Jind vide judgment and decree dated 22.11.2000 against which the defendant filed appeal and vide order dated 17.08.2001, the judgment and decree passed by learned trial Court was set aside and the matter was remanded for fresh decision with direction to appoint a Tehsildar or Naib Tehsildar as local commissioner for demarcation. Learned Civil Judge vide judgment and decree dated 23.10.2002 dismissed the suit with the observations that no encroachment had been made by defendant over the suit property. The plaintiff filed appeal which was accepted and vide order dated 30.03.2006, the case was again remanded for fresh decision after appointing a senior revenue official as a local commissioner for demarcation. The suit was again dismissed vide judgment dated 15.12.2006. In appeal learned Ist Appellate Court vide judgment dated 06.01.2009 remanded the suit for the third time to the trial Court for fresh decision on the grounds as follows:

(i) Firstly, demarcation of complete area of land bearing Khasra No. 476 measuring 4 kanals 11 marlas was not conducted and only area of 4 kanals 8 marlas was demarcated;

(ii) Secondly, the local commissioner reported that obliquely width of passage is 7 karams which when measured straight is 5 of karams.

(iii) Thirdly, the plaintiff had claimed the passage to be of 15 karmas in width as per his sale deed as Ex. P-1.

(iv) Fourthly, local commissioner committed serious lapse in executing the task assigned to him and objections filed by the defendant against his report were not decided.

While remanding the case to the trial Court for fresh decision it

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was directed to call complete report of the local commissioner and if any objections are filed by the parties to that report to decide the same on merits by allowing both the parties one opportunity for further evidence.

Learned counsel for the appellant has argued that the case had already been remanded thrice and every time the report of local commissioner was held as not proper. In these circumstances, the Ist Appellate Court instead of remanding the case could direct the local commissioner to give complete report or appoint a new local commissioner and then proceed to decide the appeal on merits.

Learned counsel for the respondent has argued that the matter in dispute cannot be decided without proper report by the local commissioner. It has been observed by the Ist Appellate Court while remanding the case that the report of local commissioner appointed in this case suffer from various infirmities and complete demarcation of Khasa No. 476 was not conducted at the spot. He has, however, no objection if the local commissioner is appointed by the Ist Appellate Court and then opportunity is given to the parties to file objections to that report before deciding the suit/appeal on merits.

The present case was filed in the year 1992. It has been finally decided thrice by trial Court and every time judgment has been set aside by the learned Ist Appellate Court with observation that the report of local commissioner is not complete or proper. In these circumstances, I am of the considered opinion that instead of remanding the case to the trial Court, learned Ist Appellate Court should proceed to call for the complete report of local commissioner already appointed or appoint a new local commissioner to conduct the demarcation and then proceed to decide the case in

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accordance with law. This will expedite the disposal of the matter, which is pending for last 27 years.

As a sequel of my above discussions, this appeal is accepted and the order passed by learned Ist Appellate Court is modified to the extent that the learned Ist Appellate Court instead of remanding the case may proceed further to decide the appeal after calling the complete report of local commissioner as per its observations or appoint fresh local commissioner, if so required. After receipt of report of local commissioner, parties will be provided opportunity to present their objections before deciding the appeal on merits.

Parties are directed to appear before the District Judge, Jind on 31.05.2019. Learned District Judge will keep the appeal with him or entrust it to other competent Court having jurisdiction in this matter for disposal in accordance with law as per above observations.

**( SURINDER GUPTA )**
**JUDGE**

**May 14, 2019**
*Jyoti-II*

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

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

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