

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

-.-

RSA 4392 of 2011 (O&M)

Date of decision: 03.10.2019

Bhagat Singh and others

.....Appellants

Versus

State of Haryana and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vikas Kumar, Advocate
for the appellants

Mr. Rohit Arya, AAG, Haryana
for the respondents

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondents/defendants from dismantling houses of the appellants and taking possession of the suit land comprising khewat No. 165/148 min, khatoni No. 306, Rect. No. 44, Killa No. 1 (17-14), situated in Village Etmadpur was dismissed by the trial Court vide judgment and decree dated 19.02.2010 and appeal preferred by unsuccessful appellants/plaintiffs was dismissed by the Additional District Judge, Faridabad vide judgment and decree dated 25.11.2010.

Counsel for the appellants would argue that during pendency of appeal before the Court of Additional District Judge, Faridabad in respect of

grant of interim injunction, the appellate Court passed an order to conduct demarcation of the suit property in accordance with standing instructions of the Financial Commissioner and submit report to the trial Court within one month. It is argued that in place of conducting demarcation of khasra No. 44/1, demarcation was conducted in respect of khasra No. 44/2, as admitted by Dalip Kumar (DW1), examined by the respondents. It is further submitted that in civil appeal No. 20 of 2010 preferred against the judgment and decree dated 19.02.2010 passed by the trial Court, an application was filed for additional evidence to demarcate the suit property through 'through light' but the same was dismissed by the first appellate Court. It is further submitted that in order to get a clear picture with regard to existing status of khasra No. 44/1, interest of justice requires that judgment and decree passed by the first appellate Court may be set aside and matter be remitted to the appellate Court for decision of the appeal afresh after getting fresh demarcation conducted in respect of khasra No. 44/1.

Counsel for the respondents has got no objection if the matter is remitted with direction to the appellate Court to get khasra No. 44/1 demarcated, in accordance with law.

In view of the above, without examining correctness or otherwise of the judgments and decrees passed by the Courts, the appeal stands disposed of. The judgment and decree passed by the appellate Court is set aside and the matter is remitted to the appellate Court for decision of the appeal afresh on the basis of materials already on record and demarcation of khasra No. 44/1, to be conducted by the concerned revenue officials either physically or through light, to be decided by the first

appellate Court, after giving notice to counsel for the parties with regard to scheduled date and time of demarcation. The parties through their counsel are directed to appear before the first appellate Court on 23.10.2019. The appellate Court shall decide the appeal within four months of parties putting in appearance.

(Rekha Mittal)
Judge

03.10.2019
Mohan Bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No