

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

257

RSA-4662-2016 (O&M)
Date of decision: 22.10.2019

RAM RANG DECEASED TH LEGAL HEIRS

... Appellants

Versus

SHIV KUMAR AND ORS

Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Kul Bhushan Sharma, Advocate for the appellants.
Mr. Suman Jain, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgments and decrees passed by the Courts whereby suit filed by appellant/plaintiff (since deceased) represented by his LRs for declaration and permanent injunction was dismissed by the trial Court vide judgment and decree dated 17.04.2013 that came to be affirmed in appeal by the District Judge, Palwal vide decree and judgment dated 19.03.2015.

A relevant extract from order of notice of motion, reads thus:-

XX XX XX

Counsel for the appellant inter alia contends that a local commission was appointed by the trial Court for conducting demarcation of Khasra No.1268 and 1269 and the commission submitted report dated 18.07.2011. The appellant/plaintiff filed objections against the said demarcation report and in the zimini order recorded by the trial Court, it was held that objections shall be decided at the time of final decision of the suit. It is argued that the Appellate Court reject contention of the appellant with regard to non-disposal of objections by presuming that the same were not pressed at the time of final arguments. It is further argued that once the appellant has submitted objections against the report of local commission and the same was held to be decided at the time of final arguments, in absence of any observations by the trial Court that the appellant does not press the objections against the report of local commission, the findings of the Court in appeal that the objections were not pressed at the time of hearing are the result of presumption and conjectures.

Notice of motion for 07.02.2019.

Counsel for the respondents has not disputed the correctness of facts recorded in the aforesaid extract.

In view of the above, since the trial Court did not consider the objections against report of the Local Commission, to be decided at the time of final arguments, judgments and decrees passed by the Courts are liable to be set aside on this score alone and ordered accordingly. The matter is remitted to the trial Court for decision of the case afresh on the basis of materials on record including the report of Local Commission and objections thereto. Parties through their counsel are directed to appear before the successor Court of Sh. Sunil Kumar Dewan, Civil Judge (Jr. Div.), Palwal on 05.11.2019. The trial Court shall decide the suit within a period of 3 months of parties putting in appearance.

22.10.2019

ashok

Whether speaking/reasoned:

Whether reportable:

(REKHA MITTAL)**JUDGE**

Yes / No

Yes / No