

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

SAO-91-2016 (O&M)

Date of decision: 29.08.2019

Ramesh Pal and others

..... Appellants

Versus

Isher Singh (deceased) through his LR and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Satbir Rathore, Advocate for the appellants.

Mr. RS Chauhan, Advocate for respondent No. 1.

RAMENDRA JAIN, J. (ORAL)

Defendant-appellants have filed instant second appeal against order of lower Appellate Court dated 03.08.2016, whereby it remanded the case to trial Court for decision afresh, setting aside its judgment and decree dated 10.02.2015, dismissing suit of the plaintiff-respondent No. 1-Isher Singh.

Briefly, respondent No. 1 filed a suit for possession of land measuring 9 marlas illegally encroached upon by appellant-defendants, out of total land measuring 3 kanals 11 marlas, fully detailed in the head note of judgment and decree of the trial court, situated at village Ram Nangal, HB No. 599, Tehsil Mukerian, District Hoshiarpur.

The trial Court after holding trial, dismissed the suit vide judgment and decree dated 10.02.2015.

Being aggrieved, respondent No. 1-plaintiff preferred appeal. After hearing both the sides, Appellate Court remanded the case to trial Court, observing that local commissioner appointed by the trial Court had exceeded his jurisdiction. Fresh demarcation report be called before deciding the suit afresh, appointing another local commissioner.

Learned counsel for the appellants *inter alia* contends that the lower Appellate Court, instead of remanding the case to trial Court with direction to decide the same afresh by calling fresh report of local commissioner, ought to have decided the appeal itself on merits.

On the other hand, learned counsel for respondent No. 1-plaintiff, vehemently refuting the above submission of learned counsel for the appellants, pleaded the legality and validity of impugned order.

Having given thoughtful consideration to the rival submissions, this Court finds the instant second appeal merits dismissal for the reasons to follow:

Learned counsel for the appellants has not been able to point out as to how and in what manner their rights would be prejudiced, in case, fresh demarcation report is called by the trial Court for just and effective adjudication of dispute amongst them.

I have carefully gone through the judgment of the lower Appellate Court and am of the considered view that lower Appellate Court has rightly observed that local commissioner had exceeded his jurisdiction, inasmuch as, he instead of reporting about alleged encroachment, if any, of the appellants over the suit land, simply mentioned that some compromise took place between the parties, at the

spot. The said observation qua compromise between the parties was beyond his scope. He was simply required to demarcate the suit land and report as to whether there was any encroachment of appellants, but he did not do so.

No doubt, lower Appellate Court could have decided the appeal itself by calling fresh report from local commissioner as argued by learned counsel for the appellants, but, since, right of the appellants is not going to be prejudiced in remand of case to the trial Court for fresh decision, after calling fresh demarcation report, therefore, this Court is not inclined to disturb findings of the lower Appellate Court, rendered for effective adjudication of lis in between the parties.

Dismissed.

August 29, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No