

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

RSA No.4119 of 2014(O&M)

Date of decision: 5.3.2019

Jaswinder Kaur and anotherAppellants

VERSUS

Gurdeep Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. P.S. Bhangu, Advocate for the appellants.

Mr. Vikram Anand, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession on the basis of alleged encroachment by the appellants/defendants was decreed by the trial Court vide judgment and decree dated 11.09.2012 and appeal preferred by unsuccessful defendants/appellants was dismissed by the Additional District Judge, Kapurthala on 11.04.2014.

The sole submission made by counsel for the appellants is that the trial Court appointed a local commission to conduct demarcation at the spot and has relied upon demarcation report dated 24.10.2009 and documents appended thereto with the observations that the appellants did not file any objection to challenge correctness and authenticity of the report but the said observation of the Courts is factually incorrect in view

of the fact that the appellants filed their objections against the report and the same are available at page 155 of the records of trial Court.

Counsel representing the respondents/plaintiffs, on the contrary, would argue that filing of objections available at page 155 of the records is a matter of record but since the appellants failed to file objections in consonance of the order dated 21.07.2009 vide which the local commission was ordered to be appointed, the Courts have rightly ignored any such objections filed by the appellants while relying upon the report of demarcation conducted by a local commission appointed for the purpose.

I have heard counsel for the parties, perused the paper-book and records.

Be that as it may, it is undisputed position of the case that the appellants filed objections dated 11.03.2010 against report dated 24.10.2009 submitted by the Kanungo and the same are available at page 155/156 of the records of trial Court. The trial Court disposed of the application for appointment of local commission vide order dated 21.07.2009. A relevant extract therefrom reads as follows:-

“Heard. Vide my separate detailed order of even date, application for appointment of Local Commissioner stands disposed off. Halqa Kanoogo is hereby appointed as Local Commissioner with the directions to demarcate the existence of the construction and its extent over the khasra numbers. His fee is assessed as Rs.1000/- to be paid by the plaintiffs. He will give a prior intimation to both the parties through

Chowkidar of the village regarding the date and time of his visit. On the said date and time, he will mark presence of the persons present, after which he is to proceed with the demarcation, which should be only to the extent of the area under encroachment and over which khasra numbers it is in existence. The demarcation is to be conducted as per the latest instructions of the Financial Commissioner, Punjab. After conclusion of the demarcation, he will prepare a report. If any party objects to it, then he will record the objections of the said party and thereafter will give his opinion with respect to the said objections. To come upon 1.8.09 for awaiting report.”

The trial Court vide order dated 05.08.2009 modified the order dated 21.07.2009 and Sadar Kanungo in place of Halqa Kanungo was ordered to be appointed as a Local Commissioner in terms of order dated 21.07.2009. Again order dated 05.08.2009 was modified by the Court on 25.09.2009 whereby S.D.M., Bholath was requested to appoint a suitable Kanungo to conduct demarcation as per order dated 21.07.2009 by directing the concerned Joint Sub Registrar to supervise the same. Eventually the local commission submitted his report as noticed in order dated 05.11.2009 and to the said report, objections dated 11.03.2010 were filed. Perusal of the zimini orders recorded by the trial Court subsequent to receipt of report of the local commission would make it evident that there is no reference to the objections dated 11.03.2010 filed by the appellants. The mere fact that the trial Court has issued directions to the

local commission on 21.07.2009 to record any objections raised by either of the parties and thereafter to give his opinion with respect to the said objection, in my considered opinion, would not debar the appellants from raising objections against report of the local commission nor the respondents can be heard to say that the Courts have rightly ignored the objections filed against report of the local commission unless it was prescribed in the order of appointment of local commission that in case a party fails to raise an objection at the time of demarcation, he would be stopped from raising objection against report of local commission. This apart, there is no such finding recorded by the Courts that since the appellants have not filed objections before the local commission at the time of demarcation, they are not entitle to raise objections before this Court, such a contention raised by counsel for the respondents is patently misconceived and liable to be rejected. As the Courts decided the case without adverting to the objections preferred by the appellants against demarcation report of the local commission, basis of the suit, judgments and decrees passed by the Courts cannot be allowed to sustain and liable to be set aside on this score alone and the matter requires remittance to the trial Court for decision of the suit afresh on the basis of materials on record including the objections against report of the local commission.

In view of what has been discussed hereinabove, the appeal is allowed. Judgments and decrees passed by the Courts are set aside. The matter is remitted to the trial Court for decision of the suit afresh on the basis of materials on record including the objections preferred by the appellants. The parties through their counsel are directed to appear before

the trial Court on 28.03.2019. The trial Court shall decide the suit within a period of two months of the parties putting in appearance. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case. An application, if any, filed by either of the parties for conducting fresh demarcation due to lapse of time would be decided by the trial Court, in accordance with law.

MARCH 5, 2019

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

:

:

(REKHA MITTAL)

JUDGE

yes/no

yes/no