

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

**(1)**

**SAO No.63 of 2017 (O&M)  
Date of Decision: January 09, 2019.**

Gurmit Singh and others

**.....APPELLANT(s).**

**VERSUS**

Prem Singh

**.....RESPONDENT(s).**

**(2)**

**SAO No.80 of 2017 (O&M)**

Prem Singh

**.....APPELLANT(s).**

**VERSUS**

Gurmit Singh and others

**.....RESPONDENT(s).**

**(3)**

**SAO No.83 of 2017 (O&M)**

Gurmit Singh and others

**.....APPELLANT(s).**

**VERSUS**

Prem Singh

**.....RESPONDENT(s).**

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

Present: Mr. H.K. Brinda, Advocate  
for the appellants in SAO Nos.63 & 83 of 2017  
and for respondents in SAO No.80 of 2017.

Mr. S.D. Sharma, Senior Advocate with  
Mr. Ved Priya Malik, Advocate  
for the respondent in SAO Nos.63 & 83 of 2017  
and for appellant in SAO No.80 of 2017.

**\*\*\*\*\***

**SURINDER GUPTA, J.**

Above mentioned three appeals have been taken up together as these arise out of orders passed by first Appellate Court in appeals filed by the parties to civil suit No.428 dated 20.07.2012/18.09.2013.

Plaintiff (Prem Singh) sought possession of the suit property and also relief of mandatory injunction to remove the construction of the Wall at point EF, pillars at point GH and the passage shown in the site plan attached with the plaint as IJKL and for peaceful usage of the passage. The suit was decreed for possession of the house and also for user of the passage.

Learned Civil Judge while passing the judgment, recorded finding on seven issues but one issue i.e. 'Issue No.1-A' framed on 11.03.2014 appears to have escaped attention of the Court and no finding was recorded on this issue.

Learned first Appellate Court looking into this fact, set aside the judgment of learned Civil Judge and the case was remanded to the lower Court with direction to decide the same afresh.

Learned counsel for the parties in all the 3 appeals are ad-idem that first Appellate Court instead of remanding the case, should have called the report on Issue No.1-A and then proceeded to decide the appeal on merits. Even while remanding the case, finding of the lower Court on other issues were not set aside by the first Appellate Court.

The submission of learned counsel for the appellants-respondents are in conformity with provisions of Order 41 Rule 25 Civil Procedure Code. Instead of calling the report, first Appellate Court has

adopted the shortcut method to dispose of the appeal without commenting upon the findings of learned lower Court on other issues. The proper course for the first Appellate Court was to call for the report on 'Issue No.1-A', which neither finds mention in the judgment nor any finding was recorded on it.

Consequently, all the three appeals are accepted. Impugned judgments dated 26.05.2017 passed by the first Appellate Court are set aside.

The parties are directed to appear before the first Appellate Court on 30.01.2019. The first Appellate Court will take the file of the appeals on board, call for the report from Civil Judge/Successor Court on 'Issue No.1-A' and then proceed to decide the appeals on merits.

**January 09, 2019.**  
*Sachin M.*

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

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

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