

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2285 of 2012 (O&M)

Date of Decision: 30.01.2020

Shinda alias Surinder Singh

... Appellant(s)

Versus

Surinder Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Sarju Puri, Advocate
for the appellant.

Anil Kshetarpal, J.

The defendant/appellant has filed the present regular second appeal against the judgment & decree dated 14.11.2011, passed by the learned first Appellate Court reversing the judgment & decree dated 25.02.2009, passed by the learned trial Court.

Parties to this litigation are neighbours. The dispute is with regard to a small strip of land in between their adjoining properties. The plaintiff filed the suit for grant of decree for mandatory injunction directing the defendant to demolish wall ABCD and restore to its original condition.

The learned trial Court, on appreciation of evidence, dismissed the suit, however, the learned first Appellate Court considered it appropriate to seek a report from the trial Court during the pendency of appeal. The learned trial Court was requested to appoint a Local Commissioner (preferably a revenue official) to demarcate the properties of both the parties and after obtaining the report, submit the same. Accordingly, the learned trial Court appointed a Local Commissioner, who after demarcating the area, submitted a report. It has been reported that a small strip of land was found to be in an unauthorized occupation of the defendant/appellant. The defendant/appellant immediately filed objections to the report by pleading that as per the directions issued by the learned first Appellate Court, the

properties of both the parties were required to be demarcated, but the Local Commissioner has failed to demarcate the property owned by the defendant/appellant.

The learned first Appellate Court has reversed the judgment & decree passed by the learned trial Court while observing that there are no objections to the report submitted by the Local Commissioner. Learned counsel for the appellant points out that the objections have been filed when the proceedings with respect to report were pending before the learned trial Court, available at page 101 of the trial Court record.

This Court has examined the trial Court record. Objections dated 04.05.2011 filed by the defendant/appellant are available in the records.

In view of aforesaid facts, there is patent error in the judgment passed by the learned first Appellate Court.

Keeping in view the aforesaid facts, the judgment & decree passed by the learned first Appellate Court is set aside. The learned first Appellate Court is requested to re-decide the appeal after considering the objections, which are part of the trial Court record. The appellant, through his learned counsel, is directed to appear before the learned first Appellate Court on 12.02.2020.

(Anil Kshetarpal)
Judge

January 30, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No