

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

SAO-4-2021(O&M)

Date of decision:23.03.2021

Sita Ram and others

.....Appellants

Versus

Santosh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Prateek Gupta, Advocate for the appellants

ANIL KSHETARPAL, J.

The order of remand passed by the learned First Appellate Court has been challenged in this appeal. The plaintiff-respondent filed a suit for grant of decree of mandatory injunction against the defendants to remove illegal encroachment over the site of 9 shops on an area measuring 84 feet x 25 feet. The plaintiff claims that she had purchased the property vide sale deed dated 15.05.2006. The defendants contested the suit but admitted the fact that the plaintiff has purchased the land measuring 2 bighas 16 biswas in Kasba Karnal, Karnal from the defendants vide sale deed dated 15.05.2006. However, it is claimed that the plaintiff is in possession of the area purchased and the defendants have not encroached upon the plot purchased by the plaintiff. Learned trial court appointed a Local Commissioner Sh. Bhoop Singh, Kanungo, who after demarcation of land comprised in khasra no. 2554 reported that there is no encroachment. The plaintiff claims that she has purchased the land bearing khasra no. 2532 and 2554 whereas the

defendants claim that they are owners in possession of the land comprised in khasra no. 2552 which the plaintiff is trying to grab by showing it as a part of her land. Learned First Appellate Court after finding that the Local Commissioner had only demarcated the land comprised in khasra no. 2544, found it appropriate to set aside the judgment of the learned trial court and direct the appointment of a fresh Local Commissioner to demarcate, accurately and in accordance with law, the land included in the khasra numbers referred to above.

Learned counsel for the defendants-appellants contends that the learned First Appellate Court could have itself appointed the Local Commissioner or at the most requested the trial court to appoint a Local Commissioner and forward the report. He submits that the order of remand in the facts of the case was not called for.

No doubt, there is some substance in the argument, however, in the facts of the present case, the entire dispute has to be adjudicated upon on the basis of a proper report from the Local Commissioner. It is not in dispute that the plaintiff has purchased the property vide sale deed dated 15.05.2006. In such a situation, unless sufficient evidence is brought on record, it will not be possible to conclude whether the defendants have encroached upon any area of the plot purchased by the plaintiff or not. Learned First Appellate Court has already rightly noticed that the Local Commissioner, appointed previously, has failed to demarcate the land comprised in khasra no. 2532.

Keeping in view the aforesaid facts, this Bench does not find it appropriate to interfere with the order of remand. However, learned trial court is requested to conclude the trial of the suit positively within a period of six months.

Disposed of.

23.03.2021	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes /No
Whether Reportable	Yes / No