

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-30 of 2023 (O&M)
Date of Order: 04.07.2023

Daulat Ram

..Appellant

Versus

Inder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aashish Gupta, Advocate,
for the appellant.

ANIL KSHETARPAL, J

1. The plaintiff in a suit for grant of decree of permanent injunction restraining the defendants from interfering in his peaceful possession over property marked 'B C G H' is in the appeal against the judgment passed by the First Appellate Court remanding the case back to the trial court.

2. The defendants have also filed counter claim for the grant of decree of possession as the plaintiff has allegedly illegally encroached upon plot no.1503. During the pendency of the suit, the property was got demarcated by appointing two local commissioners, who submitted their reports dated 02.01.2014 and 19.08.2014 Ex.D3 and Ex.D1. The First Appellate Court has found that the trial court while decreeing the suit filed by the plaintiff did not take into consideration two reports submitted by the local commissioners.

3. This Bench has heard the learned counsel representing the

appellant at length and with his able assistance perused the paper book.

4. The learned counsel while drawing the attention of the court to para 16 of the trial court judgment submits that the two reports submitted by the local commissioners have been considered by the trial court.

5. During the course of hearing, the learned counsel has read over para 16 of the judgment passed by the trial court. It is evident that while noticing the contentions of the learned counsel representing the plaintiff, there is indirect reference to demarcation of the property. However, the entire decision of the case is dependent upon the question “as to whether the appellant has encroached upon some area belonging to the defendants or not?”. In order to adjudicate such question, the trial court appointed two local commissioners to demarcate the area. Once the reports were not only produced but also exhibited, the trial court was expected to critically analyze the reports while deciding the suit. This was a substantial error committed by the trial Court. It is for this precise reason the First Appellate Court has directed the trial court to decide the matter afresh.

6. The trial court is required to appreciate the evidence brought on record. The reports submitted by the two local commissioners are pieces of evidence which have been prepared at the instance of the court. In such circumstance, these reports assume significance in the decision of the case. The failure to appreciate such evidence resulted in error which went to the root of the matter.

7. In view of the aforesaid facts, in exercise of appellate jurisdiction, this court does not find it appropriate to interfere.

8. Dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

July 04, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO