

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

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2023:PHHC:115034

**RSA-2774-2023(O&M)
Date of decision: 01.09.2023**

DEEPA MALHOTRA

..Appellant

Versus

MOHINDERO DEVI AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arjun Dhingra, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. The correctness of the findings of fact arrived at by the First Appellate Court is assailed by the defendant in this second appeal. The plaintiff's suit for possession with a consequential relief of permanent injunction was dismissed by the trial Court, however, in appeal the same has been reversed. In substance, the plaintiff claims that she purchased plot No.12 vide sale deed dated 25.02.2009. It was recorded in the sale deed that one room and a kitchen is already constructed. Defendant No.3 and 4 are owners of plot No.11 and 13. It is the case of the plaintiff that a major part of her plot has been encroached by the defendants. The defendants while contesting the suit claimed that they are the owners of the property in dispute. During the pendency of the suit, a local commissioner was appointed to demarcate the entire area, which was complied with and a report was submitted. The trial Court refused to rely upon the report of the local commissioner on the ground that the local commissioner did not inspect the presence of the defendants. The suit filed by the plaintiff was thus dismissed. The First Appellate Court has found that the local commissioner

has prepared a comparative chart of the measurement of the plots existing at the spot, which reads as under:-

<i>Serial No.</i>	<i>Plot No.</i>	<i>Measurements of plots existing on spot as per Local Commissioner Report</i>	<i>Measurement of plots as per deeds of parties.</i>
1.	<i>Dispute Plot No.12 mentioned as Plot F in the Local Commissioner’s Report</i>	6.1 feet x 50.4 feet	30 feet x 51 feet
2.	<i>Plot No.13 existing on eastern side of the dispute Plot mentioned as plot G in the Local Commissioner’s Report</i>	30 feet x 50.4 feet	30 feet x 51 feet
3.	<i>Plot No.11 mentioned as Plot No.E in Local Commissioner’s Report</i>	70.6 feet x 50.4 feet	30 feet x 51 feet

2. Thus, the trial Court has concluded that the defendants have encroached upon the major part of the plot No.12, which is under the ownership of the plaintiff. Thus, the First Appellate Court has reversed the judgment passed by the trial Court resulting in decreeing the suit..
3. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.
4. The learned counsel representing the appellant submits that the report of the local commissioner was not proved by examining him in evidence. He submits that in absence thereof, the report was not admissible.

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5. This Court has considered the submissions of the learned counsel representing the appellant, however, finds no merit therein. Under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, the Court is entitled to nominate a local commissioner to carry out the local investigation. Once the report is submitted to the Court after completing the local investigation, it becomes part of the record. In fact, the local commissioner is an officer of the Court, who is deputed to visit the spot and carry out investigation. Such report is not required to be formally proved. Moreover, the appellant never made an attempt to summon the local commissioner in order to seek clarification.

6. Keeping in view the aforesaid facts, no ground to interfere is made out.

7. Dismissed accordingly.

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

September 01st, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

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