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

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Date of Decision: 27.02.2024.

Ashok Kumar and another

...Appellants.

Versus

Sonia Kumari and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Chander Kant Rana, Advocate
for the appellants.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellants/plaintiffs against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiffs was partly decreed.

2. Brief facts of the case as per plaint are that the suit land was jointly owned and possessed by the plaintiffs. Earlier Suit No.5 dated 12.02.2001 was filed by father of plaintiffs for partition of the land measuring 13 Kanals – 11 Marlas comprised in Khasra No.88(3-1) and 83(10-0), situated in village Chaggyal, Tehsil Dasuya, District Hoshiarpur, which was decided by the Assistant Collector Ist Grade, Dasuya, on 30.07.2023, as per which father of plaintiffs became owner-in-possession of the land measuring 10 Kanals – 1 Marla. After the death of father of the plaintiffs, mutation qua the land owned by him, was sanctioned in the name of plaintiffs. The plaintiffs also obtained actual and physical possession of the suit land on 14.11.2003 through Halqa Girdawar. The plaintiffs claimed themselves to be owners-in-possession over the suit land and averred that

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defendants have no right or connection with the same. Plaintiffs also moved an application before the Tehsildar for demarcation of the land and during the demarcation, it was found that defendants have already encroached upon the land comprised in Khasra No.88/1 shown in dark colour in the site-plan. It has been averred that defendants have taken forcible possession of land measuring 19 Marlas – 6 Sarsahies out of the total land measuring 10 Kanals – 1 Marla, whereas plaintiffs were entitled to take possession of the suit land as owners thereof. Defendants were asked to surrender possession of the suit land in favour of the plaintiffs, but to no avail. It has been further averred that plaintiffs are also entitled to *mesne* profits arising out of the suit land and wrongful dispossession of the plaintiffs by the defendants. Hence, the present suit was filed by the appellants/plaintiffs.

3. The suit of plaintiffs was partly decreed by the trial Court, vide judgment and decree dated 23.12.2014. The appeal preferred by the appellants/ plaintiffs before the first Appellate Court was dismissed, vide judgment and decree dated 20.02.2018. Hence, the present Regular Second Appeal filed by the appellants/ plaintiffs.

4. Learned counsel for the appellants/ plaintiffs has contended that it has been established on record that plaintiffs/appellants are owners of the land in dispute and the land has already been partitioned by revenue courts and orders of the revenue courts have been accepted by both the parties. He has further contended that the suit has been decided by the Courts below only on the basis of demarcation report Ex.PW2/A, which has not been conducted properly as per the instructions issued by the Financial

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Commissioner and the Rules and Orders of this Court. He has argued that Local Commissioner had not conducted the demarcation as per actual and physical position and conducted the same by setting up imaginary points. No pucca point was found out while demarcating the suit land. The Local Commissioner did not demarcate the suit land as per the directions given by learned District Judge, vide order dated 06.05.2013 while remanding the case. The Local Commissioner had acted in arbitrary manner and took signatures of the appellants/plaintiffs on blank papers and converted those papers into compromise and also mentioned these facts in his report submitted before the Court. He has urged that it is not within the power of the Local Commissioner to act as an arbitrator and to record compromise between the parties and he was only to demarcate the land as per law and it was only for the Court to decide that who was in illegal possession. Thus, Local Commissioner had exceeded his power and he was not competent to decide that whose possession was illegal. He has submitted that in his cross-examination, the Local Commissioner has admitted that he had not conducted the demarcation as per pucca point. So, fresh Local Commissioner is required to be appointed for proper adjudication of the case. It has also been contended that before the first Appellate Court, the appellants/plaintiffs had filed an application under Order XLI Rule 27 CPC for leading additional evidence by producing Aks Sijra, which was necessary for proper adjudication and decision of the matter, but the first Appellate Court illegally without considering the facts properly dismissed the said application for additional evidence, vide order dated 20.02.2018,

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which is also liable to be set aside. He has contended that both the Courts below have given unnecessary weightage to the evidence of the defendants/respondents and have wrongly ignored the positive cogent evidence led by the plaintiffs/appellants and had not applied the judicious mind while passing the impugned judgments and decrees.

5. I have heard learned counsel for the appellants and gone through the records thoroughly.

6. The plaintiffs/appellants have sought relief of possession of land measuring 19 Marlas – 6 Sarsahies out of land measuring 10 Kanals – 1 Marla, which has been detailed in the head note of the plaint, by claiming themselves to be owners of the suit land and alleging that the forcible possession of land measuring 19 Marlas – 6 Sarsahies had been taken by the defendants but this encroachment has been denied by the defendants and they have claimed that both the parties are in possession of their respective shares. A perusal of *Jamabandi* for the year 1999-2000 (Ex.P1) reveals that names of the plaintiffs have been reflected in the column of ownership of the said *Jamabandi*. As per report dated 14.11.2013 of Halqa Girdawar (Ex.P3), the actual physical possession of the suit land was obtained by the plaintiffs.

7. It is pertinent to mention here that previously, this case was decided vide judgment and decree dated 22.07.2011 passed by the Court of the then learned Additional Civil Judge (Senior Division), Dasuya. The appeal was preferred before the first Appellate Court i.e. learned District Judge, Hoshiarpur, and the matter was remitted back to learned Trial Court for fresh decision in accordance with law, vide judgment/order dated

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06.05.2013. Vide the aforesaid judgment, reports of demarcation were set aside and further Sadar Kanungo was appointed as Local Commissioner to conduct fresh demarcation for ascertaining the encroachment of Khasra No.88/1 and it was also held that after receipt of report of Local Commissioner, learned Trial Court would allow the parties to adduce evidence for supporting or controverting the fresh report of Local Commissioner. As per directions of the aforesaid judgment/order, process was issued to Sadar Kanungo, Hoshiarpur, to conduct demarcation of the property in question as per law, who conducted demarcation of the property in dispute and submitted his report dated 12.10.2013 (Ex.PW2/A).

8. This is a very material document for adjudicating the controversy in hand. This report had been submitted by the Local Commissioner, Sadar Kanungo, Hoshiarpur, after demarcating the property in question as per directions of the Court. This report has been proved on record by PW-2 Sadar Kanungo Malkiat Singh. It has been specifically mentioned in the said report that after demarcating the property in question, it was found that defendants are in illegal possession of 0 Kanal – 2 Marlas of land out of Khasra No.88/1, which is the suit property and is under the ownership of the plaintiffs. The plaintiffs have claimed that defendants are in illegal possession of 19 Marlas – 6 Sarsahies out of total land measuring 10 Kanals – 1 Marla, but as per the aforesaid report of the Local Commissioner, only 0 Kanal – 2 Marlas of land of the plaintiffs is under the illegal possession of the defendants. The objections to the aforesaid report of Local Commissioner were filed by alleging that it was against the actual

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and factual position at the spot and the report had been submitted on the basis of the imaginary points as set up by the Local Commissioner at the instance of the opposite party and the Local Commissioner did not find out the pucca points at the time of the demarcation of the suit land. But the perusal of the report of the Local Commissioner shows, it has been specifically mentioned that CHAK BANDI/ISTEMAL of village Chagyyal had not been so far done, thus, there was no stone of “MUSTEEL” at the spot. In the presence of the parties, Pucca points were tried to be found out and the parties agreed to get the demarcation conducted from “Burjies”, which were in existence at Points A, B & C as shown in the site-plan with the report of Local Commissioner. Joint statement of both the parties has also been attached with the report of Local Commissioner, whereby both the parties have submitted that the demarcation had been conducted with the consent of the parties and that the parties had no objection with regard to the demarcation so conducted by the Local Commissioner. In the same report, it has also been mentioned by the Local Commissioner that the plaintiffs are also in illegal possession of 0 Kanals – 2 Marlas of land comprised in Khasra No.88/2 which property is under the ownership of the defendants. Thus, the aforesaid report was submitted by the Local Commissioner after demarcating the suit property as per the Rules and Orders framed by this Court as well as the Financial Commissioner. So in view of the aforesaid report of the Local Commissioner, it has been rightly held by the Courts below that the plaintiffs are entitled to obtain possession of 0 Kanal – 2 Marlas of land out of the suit property, which land as mentioned in the

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report of Local Commissioner is under illegal possession of the defendants.

8. Further, the application filed under Order XLI Rule 27 CPC for additional evidence was rightly dismissed by the first Appellate Court, vide order dated 20.02.2018. The appellants/plaintiffs were in the knowledge of the document sought to be produced by way of additional evidence i.e. Aks Sijra, when the suit was pending before learned Trial Court. But the same was not produced at that time when the same could have been produced before learned Trial Court by exercising due diligence by the appellants/plaintiffs. Thus, when despite being in knowledge of the said document, the same had not been produced before learned Trial Court then it cannot be said that the due diligence had been exercised. Moreover, in light of the above discussion, the said document was not required for proper adjudication of the matter in controversy.

9. In the light of the above discussion, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

10. Appeal stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

27.02.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No