

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

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2024:PHHC:050225

SAO-17-2024 (O&M)

Date of decision: 15.04.2024

AJIT SINGH AND ORS.

..Appellants

Versus

RESHAM SINGH AND ORS.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Navjot Singh Wahniwal, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. In this second appeal against order, the correctness of First Appellate Court's order remanding the civil suit back to the trial Court for deciding afresh, is challenged.

2. The plaintiffs filed suit for grant of decree of mandatory injunction directing the defendants to remove illegal and unauthorized encroachment over part of the land comprised in Khasra No.941 (9-7), which is a public passage and restraining the defendants from further encroaching upon any part of the passage. During pendency of the suit, a local commissioner was appointed, who after demarcating the area as well as the disputed property with the help of Global Positioning System (GPS) based Total Station Machine, has submitted report. However, the trial Court has dismissed the suit while rejecting the report on the ground that it cannot be considered in evidence because a demarcation has not been carried out in accordance with instructions issued by the Financial Commissioner, which was incorporated in the High Court Rules and Orders. The First Appellate Court has found that the local commissioner has used the latest technology to demarcate the area and the machine was used by an operator of the machine, however, report submitted by the local commissioner was rejected

and the First Appellate Court has found that a fresh local commissioner is required to be appointed.

3. The learned counsel representing the appellants submits that the suit filed by the plaintiffs is vague and the Court is not required to collect evidence on behalf of the plaintiffs.

4. This Court has considered the submissions of the learned counsel representing the appellants

5. While filing such suit, the plaintiffs are not required to disclose the exact encroached area. The plaintiffs have filed suit claiming that some part of the land comprised in Khasra No.941 (9-7) has been encroached, which is a public passage. Hence, the suit filed by the plaintiff is not vague.

6. In order to determine the encroachment and the exact area, which has been encroached upon, the Court is required to get the property demarcated. In order to achieve that objective, appointment of local commissioner is desirable, Hence, the Court has not directed the local commissioner to collect evidence on behalf of the plaintiffs but demarcate the suit property.

7. The learned counsel representing the appellants did not press any other point.

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

9. Dismissed accordingly.

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

April 15th, 2024

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No