

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9332 OF 2018

(Arising out of SLP(C)No. 34460 of 2016)

KALYAN SINGH

Appellant(s)

VERSUS

RAVINDER KAUR (D) THR. LRS.

Respondent(s)

O R D E R

R. BANUMATHI, J.

(1) Leave granted.

(2) This appeal arises out of judgment dated 13<sup>th</sup> May, 2016 passed by the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No.859 of 1988 in which the High Court has reversed the judgment of the First Appellate Court and restoring the judgment of the trial court thereby affirming the decree in favour of respondents/plaintiff for declaration and possession.

(3) The respondents-plaintiff has purchased the suit property admeasuring an extent of 852-1/3 sq. yards by a sale deed dated 6<sup>th</sup> September, 1978. Alleging that the appellant-defendant has

taken forcible possession of the suit property, the respondents-plaintiff has filed the suit for declaration and possession. The trial court decreed the suit in favour of the respondents-plaintiff holding that the vendor of the plaintiff had appeared and testified about sale deed dated 6<sup>th</sup> September, 1978 that physical possession of the property covered under the sale deed was delivered to them.

(4) Being aggrieved, the appellant herein filed appeal before the Appellate Court which was allowed. After referring to the Report of the Local Commissioner that the respondents-plaintiff is in actual possession of 955 sq. yards as against 852-1/3 sq. yards purchased by them and that the consolidation records are missing and also that there was no *pucca burji*, the First Appellate Court reversed the judgment of the trial court thereby dismissing the respondents-plaintiff's suit. In the second appeal, the High Court has reversed the judgment of the First Appellate Court and held that the Local Commissioner has not verified the available map with the *Patwari* and that based on the Local Commissioner's Report, the First Appellate Court ought not to have reversed the judgment and decree of the trial court.

(5) We have heard Mr. Rakesh Kumar Khanna, learned senior counsel appearing for the appellant and Mr. Sangram S. Saron, learned counsel appearing for the respondents.

(6) As seen from the sale deed filed (Annexure CA-1 of the paper book), the respondents-plaintiff has purchased the property, an extent of 852-1/3 sq. yards in Khasra No.316/1. As per the evidence of the respondents-plaintiff-vendor, the respondents-plaintiff was put in physical possession on the land covered under the sale deed viz. an extent of 852-1/3 sq. yards. As pointed out by the First Appellate Court that after the local inspection of the suit property the Local Commissioner in his Report, Ex.D1/K, has observed that the respondents-plaintiff is in possession of 955 sq. yards of the land though she (Ravinder Kaur) actually purchased 852 sq. yards only and the said Report was not challenged by the respondents-plaintiff. As pointed out by the First Appellate Court when the Local Commissioner's report was not challenged by the plaintiff, the oral testimony of Sajjan Singh (PW-2), vendor of the plaintiff, and her husband, Ripudaman Singh (PW-1), does not substantiate the claim of the plaintiff that the appellants have encroached upon the suit property. The claim of the respondents-plaintiff that the appellant has encroached upon the property and took forcible possession under the garb of temporary injunction in the earlier suit remains unsubstantiated. Further there are no clear averments as to the alleged date of encroachment and the steps then taken by the respondents-plaintiff. In our considered view the High Court has not considered the findings recorded by the First Appellate Court which is based upon the appreciation of the evidence and Report of the Local Commissioner.

(7) That apart in the second appeal, no question of law much less substantial question of law arose and the substantial question of law framed by the High Court is not a substantial question of law but purely a question of fact in dispute between the parties. The impugned order of the High Court in Regular Second Appeal No.859 of 1988 is not sustainable and is accordingly set aside.

(8) In the result, the appeal is allowed, the judgment of the First Appellate court is restored and resultantly the suit of the respondents-plaintiff is dismissed.

.....J.  
(R. BANUMATHI)

.....J.  
(INDIRA BANERJEE)

NEW DELHI,  
SEPTEMBER 11, 2018.