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**(2019) 04 SHI CK 0050**

**In the High Court Of Himachal Pradesh**

**Case No : Regular Second Appeal No. 36 Of 2018**

Maya Pradhan(Since) Deceased Through Her Legal Heirs

APPELLANT

Vs

Brijinder Thakur And Others

RESPONDENT

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**Date of Decision :** 30-04-2019

**Acts Referred:**

**Citation :** (2019) 04 SHI CK 0050

**Hon'ble Judges :** Sureshwar Thakur, J

**Bench :** Single Bench

**Advocate :** N.K. Sood, Hemant Kumar, Anand Sharma, Karan Sharma, Pawan Gautam

**Final Decision :** Dismissed

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## **Judgement**

Sureshwar Thakur, J

1. The instant appeal stands directed, against, the concurrently recorded pronouncements, by both, the learned Courts below, wherethrough, the plaintiffs' suit for rendition of a decree for permanent prohibitory injunction, and, for vacant possession, vis-a-vis, the suit land, stood hence decreed. The aggrieved defendant, through, the instant appeal, contests the validity of the afore pronouncements, and, also therethrough, strives to reverse the concurrent verdicts recorded, upon, Civil Suit NO. 246/09/06.

2. The entire fulcrum of the lis engaging the parties at contest, is, harboured, upon, a report of the local commissioner, borne in ExPW2/A. The author of Ex.PW2/A, stepped into the witness box, as PW-2, and, thereat rendered proof qua contents thereof, and, despite his being subjected, to the rigor of an exacting cross- examination, no firm elicitations, were evinced from him, for hence negating Ex.PW2/A, and, emphasisingly on the hereinafter extracted legal principles:-

"(i) Before starting demarcation, to locate the boundary, ix points should be ascertained from the parties and statements of parties regarding fix points

should be recorded.

(ii) If the parties cannot agree on any such fix recognizable points then the official will find such point themselves with the help of field map and changing on the point which e finds undistrubed since the last settlement.

(iii) Where triangle system of measurement is adopted then three fix points should be fixed in field map so that disputed land falls within three points and then measurement should be carried out from all three points.

(iv) Where square system of measurement is adopted then disputed land should be shown in square system in field map and measurement should be carried out from all points in square system.

(v) After demarcation, boundary should be fixed by erecting the boundary so that there would be no dispute later on. Statements of parties after demarcation is over must be recorded which should form part of demarcation report.

(vi) Before going at the spot revenue officer must inform all parties by notice in writing regarding time and date of his visit to the spot and copy of such notice should be retained on record of demarcation report.

(vii) Copy of musabi shall be used for measurement."

3. Since, only upon, the afore principles, hence, being evidently proven to be not complied, or infractions thereof, rather erupting, through emanations, of, admission(s), if any, made by PW-2, during, the course of his being subjected, to cross-examination, hence, thereupon only Ex.PW2/A, would be inferred to stand ridden, with, a legal fallibility, hence rendering, any placing, of, reliance thereon, being infirm, whereas, (a) with the afore principles rather coming to be affirmatively proven, (b) and, more importantly, testified compliance therewith, rather remaining unshattered, during, the course, of, an exacting cross-examination, whereto PW-2 hence stood subjected, (c) besides when defendant No.1 (now deceased), through, her statement comprised in Ex.PB, statement whereof stood recorded, by the Local Commissioner, in contemporaneity, vis-a-vis, his holding demarcation proceedings, rather accepting the report borne in Ex.PC, (d) hence engenders an inference qua the report of the Local Commissioner, borne in Exts. PW2/A, and, in Ex.PC, hence, acquiring, the, fullest legal vigour, importantly, for want, of, the afore extracted legal principles, rather not evidently coming under any cloud, (e) thereupon, the signed acceptance by defendant Maya Pradhan, vis-a-vis, the report of the local Commissioner, and, also with cogent proof hence being adduced by the plaintiffs, vis-a-vis, the report of the local commissioner rather not infringing, the, afore extracted trite principles, (f) obviously, thereupon a firm inference, is, bolstered, that the rendition of concurrent decrees by both the learned courts below, rather not, being ingrained with any legal fallibility.

4. Be that as it may, this Court may have proceeded, for putting to rest, the controversy engaging the parties at contest, appertaining to encroachment(s),

being made, upon, the suit property, by the defendant, to, (i) hence, either direct appointment, of, a local commissioner or after making a limited remand, vis-a-vis, the afore purpose, to, the learned First Appellate Court, thereafter, also direct the latter Court, to, upon, the report as may emanate from the Local Commissioner concerned, hence, make, a, fresh decision, upon, the issue connected therewith. However, the afore recouring(s), would be made, by this Court only, upon, the report, of, the local commissioner concerned, evidently not falling, within the afore extracted parameters, or upon, the litigants concerned, proving through, the afore referred recourings, qua the report of the local commissioner, being not amenable for any reliance hence being placed thereon, (ii) whereas, reiteratedly, when, infringement(s), vis-a-vis, the afore parameters, for, hence making a forthright successful onslaught, upon the report of the local commissioner, is rather wanting, (iii) thereupon, it is concluded that this Court, is, constrained not to either make any appointment, of, a local commissioner nor this Court would be constrained to make any limited remand, of, the lis, to the learned First Appellate Court, conspicuously, for, appointing a fresh Local Commissioner, vis-a-vis, the afore purpose, and, for thereafter making a fresh decision, upon, the connected therewith issue.

5. The above discussion, unfolds, that the conclusions as arrived by the learned first Appellate Court, as well as, of the learned trial Court being based, upon a proper and mature appreciation of evidence on record. While rendering the findings, both the learned courts below have not excluded germane and apposite material from consideration. Consequently, no substantial question of law, much less a substantial question of law, arises, for determination in the instant appeal.

6. For the foregoing reasons, there is no merit in the instant appeal, and, it is dismissed accordingly. In sequel, the impugned judgments and decrees are affirmed and maintained. Decree sheet be prepared accordingly. All pending applications also stand disposed of. No order as to costs. Records be sent back forthwith.