

RSA No.299/2018

08.05.2019 Present: Mr. B.N. Misra, Senior Advocate with Mr. Harish Kumar, Advocate, for the appellant.

Mr. Romesh Verma, Advocate, for the respondent.

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Admitted on the following substantial questions of law:-

- (i) Whether the demarcation report of the Court Commissioner Ext.CX1 which is contrary to the case of the plaintiff and the evidence on record and in violation of the orders of the Ld. Trial Court to conduct demarcation with the old and the new mussavi as well as in contravention of the instructions of the Financial Commissioner in this regard should have been accepted by the Ld. Court below?
- (ii) Whether adverse inference ought to have been drawn against the plaintiff who has failed to produce an iota of evidence on the record in support of her allegation that defendant encroached upon her land in the year 2005.
- (iii) Whether appointment of Local Commissioner by the Ld. Court below and accepting its report which is beyond and contrary to the plaintiff's pleadings amounts to fishing for evidence by the Ld. Trial Court which is not permissible under law.

(iv) Whether deliberate failure by the Ld. Lower Appellate Court to decide the application of the appellant under Order 41 Rule 27 CPC in spite of its order dated 13/06/2016 to do so along with main appeal has amounted to failure of justice and non-exercise of jurisdiction vested in the Ld. Court?

CMP No.6537/2018

In view of the admission of appeal, operation and execution of the impugned judgment and decree dated 27.3.2018, passed by learned Additional District Judge (II), Shimla in Civil Appeal No.19-S/13 of 2017/2015, titled as *Shri Ram Gopal versus Smt. Veena Kuthiala*, is ordered to be stayed. Application stands disposed of.

CMP No.10773/2018

To be heard alongwith the main appeal.

(Tarlok Singh Chauhan)
Judge

May 8, 2019 (K S)