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C.A.No. 3922 OF 1998

ITEM No.105

Court No. 8

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 3922 of 1998

SHISHI RAM Appellant (s)

VERSUS

KISHORE DASS & ORS.Respondent (s)

Date : 11/12/2003 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. G. Ramakrishna Prasad,Adv.
Mr. S. Udaya Kumar Sagar,Adv.

For Respondent (s)Mr. Naresh K. Sharma,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 12.45 p.m. to 2.20 p.m.

The civil appeal is dismissed.

No order as to costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3922 OF 1998

Shishi Ram ...Appellant(s)

Versus

O R D E R

In the impugned order, the High Court allowed the appeal and set aside the order passed by the learned District Judge in the first appeal challenging the validity of a decree passed on the basis of a compromise. The High Court, in paragraph (7) of the order, has recorded thus:

"7. After hearing learned counsel for the parties and going through the record, we find substance in the submission made on behalf of the defendants that decree passed by the trial court was a consent decree and no appeal was maintainable against it before the District Judge. The perusal of statement of parties, which is duly signed by the plaintiff, shows that he had agreed to abide by the demarcation to be given by the Local Commissioner on the spot. We do not find any merit in the submission made by learned counsel for the plaintiff that

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since demarcation was not made on the basis of new record it was bad and deserve to be rejected as it is an after thought. The plaintiff had not only agreed to the demarcation but had also requested the Local Commissioner in his statement that necessary corrections be made in the revenue record as per the demarcation. Referring to the statements of the parties, the Local Commissioner has stated in the end of his report that both the parties have agreed to the boundaries fixed by him in their presence and accepted the demarcation. In this view of the matter, the trial court has rightly dismissed the objections raised by the plaintiff and accept the report of the Local Commissioner to pass the judgment dated 8th March, 1988 as per the compromise arrived at between the parties."

It is not disputed that both the parties agreed for appointment of a named Commissioner to demarcate lands and make a report, pursuant to the agreement between the parties. The trial court, in the suit, passed the order appointing the Commissioner and directing him to carry out the work. The Commissioner submitted his report. The plaintiff, who is the appellant before us, filed objections to the Commissioner's report. The trial court did not find substance in the said objections and, in that view, proceeded to pass the order on the basis of the report made by the Commissioner. When no formal decree was drawn, it is the appellant who himself moved the High Court, in a writ petition, seeking direction to the trial court to draw the decree.

Thereafter, he filed the appeal before the first appellate court - the District Judge, Shimla - in effect,

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questioning the decree passed by the trial court on the basis of the Commissioner's report. The learned District Judge allowed the appeal and remitted the matter to the trial court to consider the case in the light of the objections raised by the appellant herein and pass orders thereon. In the appeal filed by the defendant, the High Court, by the impugned order, set aside the order passed by the learned District Judge recording, as stated above.

The learned counsel for the appellant contended that the High Court was not right and justified in reversing the order passed by the first appellate court, particularly when all that the first appellate court did was to direct the trial court to consider the objections and pass appropriate orders thereon.

Per contra, the learned counsel for the respondent made submissions supporting the impugned order.

Having perused the impugned order, particularly taking note of what is stated in paragraph (7), extracted above, and in the light of the admitted facts, we are satisfied that the impugned order does not suffer from any infirmity either in law or on facts. The appeal, therefore, has no merit. It is, accordingly, dismissed.

No order as to costs.

.....J.

[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
December 11, 2003.