

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 159 of 2005**

**Decided on: March 30, 2006**

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**Tara Devi**

**.....Appellant.**

**VERSUS**

**Ishwar Dass**

**.....Respondent.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

***Whether approved for reporting? No.***

**For the Appellant : Mr. Suneet Goel, Advocate.**

**For the Respondent : Mr. Balwant Kukreja, Advocate.**

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**Surjit Singh, Judge (Oral)**

Heard and gone through the record.

2. Properties of the appellant-defendant and the respondent-plaintiff are adjacent. Some portion of the property of the appellant-defendant had been encroached upon by the respondent-plaintiff and similarly some portion of the respondent's-plaintiff's property had been encroached upon by the appellant-defendant. Appellant-defendant filed a suit in the past, claiming possession of that portion of his property which had been encroached upon by the respondent-plaintiff. In that suit, the respondent-plaintiff was impleaded as defendant. Matter was got resolved by the *Lok Adalat* and a compromise was arrived at, the terms of which were reduced

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**<sup>1</sup> *Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

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into writing in the form of Ex. P-1. The parties agreed that they would return each other's encroached upon portions of the property.

**3.** Plaintiff-respondent filed another suit alleging that, in terms of compromise Ex.P-1, the portion of his property encroached upon by the appellant-defendant had not been returned, though he had returned the appellant's portion of property. Appellant- defendant took the plea that she had already returned the portion encroached upon by her. Trial Court dismissed the suit holding that fresh demarcation had been obtained by the respondent-plaintiff but the report had not been proved and so his suit was liable to be dismissed. Further, it was observed by the trial Court that in Para-1 of the plaint, the plaintiff having stated that he was owner in possession of the entire area of the Khasra number, there could not have been question of any encroachment on any portion of that Khasra number.

**4.** On appeal having been filed against the decree of dismissal of the suit, the learned first Appellate Court has reversed the decree of dismissal of suit and passed a decree for possession in favour of the respondent-plaintiff. Appellant-defendant has now come in appeal.

**5.** I have heard the learned counsel for the parties and gone through the record.

**6.** The view taken by the trial Court that since the respondent-plaintiff had taken fresh demarcation but had withheld the report of demarcation, the suit was liable to be dismissed, has rightly been disapproved by the learned first Appellate Court. As a matter of

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fact, an overall reading of the pleadings shows that the respondent-plaintiff based his claim on the report of the *Kanoongo*, obtained during the course of the earlier suit filed by the appellant-defendant, and that report of the *Kanoongo* together with *tatima* attached with that report were proved on the record of the trial Court. Since compromise Ex.P-1 was based upon the aforesaid report and the *tatima*, enclosed with that report, report of fresh demarcation was totally an irrelevant piece of evidence.

7. Learned counsel for the appellant-defendant says that since the defendant had already returned the encroached upon portion of the respondent's-plaintiff's property, the suit is liable to be dismissed. The evidence on record, as discussed by the learned first Appellate Court, shows that the encroached upon property has not been returned. In any case, even if the encroached upon portion of the property of the plaintiff-respondent has been returned, as alleged by the learned counsel for the appellant-defendant, in that situation the decree will be deemed to have been satisfied. Suffice it to say that there is no dispute as regards the site of the portion of the property of the respondent-plaintiff, with respect to which relief of possession is sought, as the same is depicted in the compromise Ex.P-1 read with the report of the Field *Kanoongo* and the *tatima* attached with that report.

8. In view of the position stated above, no question of law, much less a substantial question of law, arises in the present appeal. Hence, the appeal is dismissed.

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**CMP No.255/2005**

Dismissed. Interim order, dated 7.4.2005, passed on the application, is vacated.

**March 30, 2006(sd)**

**( Surjit Singh )  
Judge.**