

CIVIL APPEAL NO.....OF 2008
(Arising out of SLP©No.7510 of 2007)

Shanti Sarup & Ors. ...Respondents.

O R D E R

1. Leave granted.
2. This is an appeal filed by the Punjab Waqf Board who was the plaintiff in a suit for declaration and injunction. The High Court in the second appeal had summarily dismissed the appeal on the ground that the second appeal was concluded by the concurrent findings of fact arrived at by the courts below. From the judgment itself, it would appear that the Board had failed to prove that the respondents have encroached any land belonging to the appellant-Board. In view of the aforesaid

position, the second appeal was summarily dismissed by the High Court. In our view, the High Court ought not to have dismissed the suit summarily merely on the ground that the second appeal was concluded by the concurrent findings of fact. The dispute that was raised by the parties before the court was whether the respondent had encroached upon any land belonging to the appellant-Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 of the CPC. The appellate court found that

the trial court did not take into consideration the pleadings of the parties when there was no specific denial on the part of the respondents regarding the allegations of unauthorized possession in respect of the suit land by them as per paragraph 3 of the plaint. But the only controversy between the parties was regarding demarcation of the suit land because land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial court was wrongly rejected. It is also not in dispute that even before the appellate court, the appellant-Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land. In our view, this aspect of the matter was not at all gone into by the High Court while dismissing the second appeal summarily. The High Court ought to have considered whether in view of the

nature of dispute and in the facts of the present case, whether the Local Commissioner should be appointed for the purpose of demarcation in respect of the suit land.

3. For the reasons aforesaid, we are of the view that the High Court ought to have considered this aspect of the matter and then to decide the second appeal on merits. Accordingly, we set aside the judgment and decree passed in the second appeal and the second appeal is restored to its original file. The High Court is requested to decide the second appeal in the light of the observations made herein above within six months from the date of supply of a copy of this order to it. The appeal is thus allowed. There will be no order as to costs.

.....J.

[TARUN CHATTERJEE]

New Delhi;

.....J.

July 16, 2008.

[J.M. PANCHAL]