

A

SHRI JAI KISHAN
v.
SHRI KESHAV RAM AND ORS.

DECEMBER 13, 1996

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Constitution of India, 1950 : Article 136.

C

Finding of fact—Interference with by Supreme Court—On the facts of case High Court found that the view taken by Appellate Court was not vitiated by any illegality—Finding substantiated by Report of Local Commissioner—Held in such circumstances it was not necessary for the Supreme Court to go into the matter.

D

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 23678 of 1996.

From the Judgment and Order dated 8.7.96 of the Himachal Pradesh High Court in R.S.A. No. 448 of 1990.

Mahendra Singh and Devendra Singh, for the Petitioner.

E

The following Order of the Court was delivered :

It is stated in the judgment of the learned single Judge of the High Court at pages 4 and 5 thus :

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"When the matter was argued before me, I was of the opinion that the measurements had not been taken by the Tehsildar and the Revenue Patwari in accordance with the well set rules of procedure in this behalf. Consequently, with the consent of the parties, I passed an order appointing another Local Commissioner i.e. Tehsildar Kasauli and issued certain directions to him to go to the spot and measure the site in dispute and to submit a report in detail. This order was passed on 20th May, 1996 and this judgment be read in continuation of that order, it may also be noticed at this stage that the parties before me had undertaken that they will abide by the report to be submitted by the Local Commissioner and no objections would be filed before this Court against that. The report

H

of the Local Commissioner has been received by this Court in sealed cover which was ordered to be opened in the presence of the learned counsel appearing for the parties. This report is hereby marked as Ex. C-1 and it shall form part of the record." A

On perusal of the report, the High Court has stated thus :

"It is also there in the report that the appellant- defendant was unable to substantiate his claim that there was old existing building on the disputed site which he alleges to have purchased through the registered sale deed. On measurements, it has been found that the defendant has encroached upon an area belonging to the plaintiff to the extent of 0-4 Biswas. The report is further accompanied by the plan which was prepared by the Local Commissioner and the encroachments stands indicated therein. The statements of the parties were also recorded by the Local Commissioner and are attached to the report along with the field book." B C D

On the basis of the above factual matrix, the High Court has found that the view taken by the appellate Court was not vitiated by any illegality since that finding was substantiated by the report, Ex. C-1 given by the Commissioner appointed by the High Court. This being the factual position, we do not propose to go into the matter. E

The special leave petition is dismissed.

T.N.A.

Petition dismissed.