

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. NO. 126775 OF 2017  
IN  
MISCELLANEOUS APPLICATION NO. 1515 OF 2017  
IN  
CIVIL APPEAL NO. 6988 OF 2009

MUNICIPAL COUNCIL BAWAL & ANR.

APPELLANT(S)

VERSUS

BABU LAL & ORS.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

1. I.A.No. 126775 of 2017 - appeal against Registrar's Order of Lodgement dated 27.03.2017 is allowed. Delay in filing the application for restoration is condoned and the application for restoration is allowed. The order dated 03.06.2016 dismissing the appeal is hereby recalled.

2. Heard the learned counsel for the appellants. We find that there are concurrent findings of fact, one by the first appellate court and the other by the High Court. Paragraphs 13 & 14 of the Judgment of the first appellate court read as follows :-

*"13. The Municipal Council filed objections against the report of the Local Commissioner, but did not examine him to clarify the measurements and the demarcation carried out at the spot. DW1*

*T.R.Sharma, Secretary of the Municipal Committee, Bawal in his affidavit Ex. D1/A stated that report of the Local Commissioner was not correct because he had not affixed three pucca points and that at the time of demarcation, representative Om Prakash Clerk of the Committee had objected to it but in order to prove the same neither said Om Prakash was produced nor the Local Commissioner was examined regarding the objection if any.*

*14. A perusal of the report Ex. PF of the Local Commissioner would reveal that pucca point were affixed and the measurements were carried out at the spot. On the other hand, the defendant/Municipal Committee did not produce any demarcation report which they might have obtained before raising the construction of the road and the drain."*

3. In the impugned Judgment, the High Court has entered a finding based on the report that it was the appellants who had encroached upon the part of the land of the plaintiffs without acquiring the same. Further, it was held that :-

*"It was the stand of the defendant in the written statement that the land measuring 1 kanal on the western-southern side was owned by*

one Satbir Singh. The plaintiffs have purchased the said 1 kanal from Satbir Singh. Therefore, the defendants cannot deny the title of the plaintiffs over such land. The Tehsildar was appointed as Local Commissioner to demarcate the suit land. Such demarcation has been carried out in accordance with law and in the presence of the representative of the Municipal Council. The Tehsildar was not cross-examined in respect of the process of demarcation."

4. In that view of the matter, we do not find any merit in the appeal, which is, accordingly, dismissed.

.....J.  
[ KURIAN JOSEPH ]

.....J.  
[ AMITAVA ROY ]

New Delhi;  
January 10, 2018.

ITEM NO.8

COURT NO.5

SECTION IV

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

I.A. NO. 126775 OF 2017 IN MISCELLANEOUS APPLICATION NO. 1515 OF 2017 IN CIVIL APPEAL NO. 6988 OF 2009

MUNICIPAL COUNCIL BAWAL &amp; ANR.

Petitioner(s)

VERSUS

BABU LAL &amp; ORS.

Respondent(s)

(FOR APPEAL AGAINST REGISTRARS ORDER XV RULE 5 ON IA 126775/2017)

Date : 10-01-2018 This application was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH  
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. Vishwa Pal Singh, AOR  
Mr. Surjeet Singh, Adv.  
Dr. Pooja Jha, Adv.

For Respondent(s)

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

I.A.No. 126775 of 2017 - appeal against Registrar's Order of Lodgement dated 27.03.2017 is allowed. Delay in filing the application for restoration is condoned and the application for restoration is allowed. The order dated 03.06.2016 dismissing the appeal is hereby recalled.

The appeal is dismissed in terms of the signed non-reportable Judgment.

(JAYANT KUMAR ARORA)  
COURT MASTER

(RENU DIWAN)  
ASSISTANT REGISTRAR

(Signed non-reportable Judgment is placed on the file)