

order dated: 22.04.2021. Lastly, it is submitted that when appellant demanded to Respondent No.1 to 6 to vacate and handover the possession of his portion, they have issued threats of dire consequences.

2. Admittedly, suit of the appellant was proceeded ex parte; affidavit-in-ex parte proof was submitted along with certain documents; the right of cross-examination was given to the respondents/defendants, who have chosen to remain absent before this Court despite publication. Learned trial Court failed to refer any portion of evidence produced by the appellant or title documents. In a similar fashion, the appellate Court, while deciding appeal, relied upon the judgment of the trial Court. Needless to mention that the appellate court was required to pass independent order by examining all the relevant documents and evidence but that procedure was not undertaken by the appellate court, which is against the maxim of **“Accumniobserventia non-estrecedenum”** (*if a thing is required to be done in a particular manner, it has to be done in that manner, if not, would be unwarranted under the law*).

3. Accordingly, instant appeal is allowed. The judgments passed by the trial court as well as the appellate court are set aside and the case is remanded back to the trial court. The plaintiff would be at liberty to call any witness for his evidence. With regard to proof of ownership, further, if any, the trial Court shall decide the lis on merits while considering the evidence available on record, coupled with admitted documents. Trial Court would be competent to pass direction with regard to demarcation if appellant files an application. However, under the doctrine of lis pendence no third party interest shall be created and this protection will remain only for one month and the trial court shall decide the fate within two months.

JUDGE

SAJID