

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 1244 of 2014
Date of decision: -14.8.2015

Charanjit Singh

.....Petitioner.

vs.

Birinder Singh and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE KULDIP SINGH

Present: - Mr. Amit Mehta, Advocate for the petitioner.

Mr. Vikas Sagar, Advocate for
Mr. Shailender Kashyap, Advocate for
respondent Nos 1 and 2.

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KULDIP SINGH, J. (Oral)

Impugned in the present petition is the order dated 24.1.2014 passed by the learned Civil Judge (Junior Division), Ludhiana vide which the application for appointment of Halqa Kango as a Local Commissioner to demarcate the property and report in which Khasra Number, Plot No. 5 measuring 200 square yards is situated, was dismissed.

The brief background of the case is that the petitioner-plaintiff had filed a suit for declaration challenging the sale deed dated 14.5.2007 executed by defendant No. 3 in favour of defendants No. 1 and 2, claiming that it is not binding on his rights over the property bearing plot No. 5 measuring 200 square yard

boundaries of which had been fully detailed in the head note of the plaint.

A perusal of the pleadings shows that the gist of the controversy is that it is disputed whether the said property falls in Khasra No. 1596/3 as claimed by the plaintiff or whether it falls in Khasra No. 1601 as claimed by the defendants? Therefore, primarily, it is a case where the location of plot No. 5 measuring 200 square yard with boundaries is required to be determined. In this case, plaintiff had led his evidence and the evidence of defendants was going on when the present application was filed. The trial Court dismissed the said application on the ground that it was filed at belated stage and that he had already filed an application and the same was not pressed.

I have heard learned counsel for the parties and have also carefully gone through the case file

Admittedly, the plaintiff had completed his evidence and the evidence of the defendants was going on when the present application was filed and therefore, primarily, the application was filed at belated stage. Now the question would arise as to how the controversy can be determined in the present case? I am of the view that the oral evidence or the proving of sale deed by both the parties will not help. The Court is required to establish the identity of plot No. 5 which can be determined only after demarcation. Only thereafter it can be said as to whether the said plot is

situated in Khasra No. 1596/3 as claimed by the plaintiff or whether it falls in Khasra No. 1601 as claimed by the defendants. The Court exists to do the justice between the parties. In the present case, the controversy can be effectively solved by way of demarcation. I am of the further view that in such a case rather the Court should have suo moto appointed the Local Commissioner for demarcation so that controversy can be settled for all times to come.

In view of the matter, the revision is allowed and the trial Court is directed to appoint the Halqa Kango as Local Commissioner, who shall conduct the demarcation of Khasra No. 1596/3 and 1601 in the presence of both the parties and the report whether plot No. 5 measuring 200 square yards as detailed in the head note of the plaint, falls in Khasra number 1596/3 or 1601. The cost of the Local Commissioner shall be borne by the plaintiff. The plaintiff is also burdened with the cost of Rs. 5000/- for filing such application at belated stage. It is further directed that after the report is received, the said Kango will be summoned as the Court witness and both the parties shall be allowed to cross examine him regarding his report.

Civil Revision is allowed accordingly.

(KULDIP SINGH)
JUDGE

14.8.2015
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