

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-288-2015

Date of decision: 14.1.2015

Chander Pal

..... Petitioner

Versus

Pehlwan Daya Nand and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Ashok Tyagi, Advocate for the petitioner.

R.P. NAGRATH, J. (ORAL)

Challenge in the instant petition filed under Article 227 of the Constitution of India, is mainly to the order dated 10.11.2014 (Annexure P-7) passed by the Civil Judge (Junior Division), Sonapat. Plaintiff-petitioner has filed a suit for permanent injunction for restraining the respondents from causing any hindrance in raising of the construction of a wall on the land bearing khasra No. 22//12/2/1 measuring 1 kanal 10 marlas. The trial Court observed in the order dated 28.11.2013 (Annexure P-1) when the status quo regarding construction was granted, that the site plan was necessary to determine the exact location of the suit property as well the location of the construction work

of metalled road. Petitioner-plaintiff was directed to place on record the site plan during the pendency of suit. The status quo was vacated on 16.12.2013 on the undertaking of the plaintiff-petitioner that he will leave 22 feet wide road/path and would raise construction within in Killa No. 22//12/2/1 and the respondents were restrained from interfering in the construction work of the petitioner. Subsequently, a dispute arose between the parties and accordingly the learned trial Court appointed a Local Commissioner to demarcate the land. The Local Commissioner, has furnished his report dated 6.2.2014 (Annexure P-5) to which the plaintiff-petitioner filed objections dated 11.4.2014 (Annexure P-6).

The petitioner is aggrieved by the observation of the learned trial Court in the order dated 10.11.2014 (Annexure P-7) passed on the objection petition filed by the petitioner-plaintiff to the report of Local Commissioner (Naib Tehsildar) who has furnished the demarcation report and further that the trial Court has not allowed the police assistance for implementation of the restraint order already issued against the respondents.

I have heard learned counsel for the petitioner and perused the impugned order as well as the paper-book.

In the order dated 10.11.2014 (Annexure P-7) the learned trial Court observed as under:-

“7. In the present case Local Commissioner has done the demarcation after giving notice to parties and after affixing pucca points. At this stage it cannot be decided whether impugned LC Report is wrong and

liable to be set aside. Thus in view of case law referred above it would be beneficial if Local Commissioner is examined at the stage of evidence and then if it appears to his court that the report of the Local Commissioner is not proper then court can always re-appoint a commissioner and call for a fresh LC report.

8. Accordingly this court is of the view that the Local Commissioner should first be examined as a witness and only then it shall be decided by this court whether this report is proper or not. In view of observations made above the present application is disposed of accordingly and case is adjourned to 27.11.2014 for filing replication if any and settlement of issues.”

I am of the view that the learned trial Court is quite right in making the above observations that the challenge to the report of Local Commissioner could be made only during the trial of case, after the Local Commissioner is cross-examined by the parties about correctness or otherwise of his report. In view of the above, there is no merit in the instant petition and the same is dismissed.

The trial Court is directed to dispose of the suit expeditiously.

January 14, 2015
rishu

(R.P. NAGRATH)
JUDGE