

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2850 of 2013 (O&M)
Date of Decision: 28.07.2015.

Budh Ram and others

.....Petitioners

Versus

Bharu Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ajay Jain, Advocate
for the petitioners.

Mr. P.R.Yadav, Advocate
for the respondents.

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 12.4.2013 (Annexure P-8).

Learned counsel for the petitioners has submitted that as per the report Annexure P-7 submitted by the Local Commissioner dated 11.5.2009, on an application moved by the plaintiff, no encroachment was found to have been made by the petitioners on *khasra* No. 122. Hence, the learned Executing Court had erred in placing reliance on the report submitted by the Local Commissioner dated 17.2.2013 while passing the impugned order. The report dated 17.2.2013 submitted by the Local Commissioner had not been prepared as per law.

Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that as per the report submitted by the Local Commissioner, petitioners had encroached upon 242 square feet area comprised in *khasra* No. 122. Hence, the petitioners had been rightly ordered to remove the unlawful construction/hindrance raised by them.

Respondents had filed suit for permanent injunction. The suit filed by the respondents was decreed by the Trial Court vide judgment/decreed dated 20.10.2004. The Trial Court while decreeing the suit of the respondents has held as under:-

“As per my sequelwise finding on the above mentioned issues, plaintiff has duly proved that the defendants have created hindrance and obstacle in the passage, therefore, the suit of the plaintiff for permanent injunction is maintainable and the defendant is hereby directed to remove the obstacle, construction, if any made, temporary Chappar, stones etc., from the possession immediately and he is permanently directed not to create any hindrance, obstacle in any manner in the passage in future. Hence, the suit of the plaintiff is decreed with costs and with special cost of Rs. 3,000/-. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.”

It was also held by the Trial Court that the public path was in existence in *khasra* No. 122. The hindrance created by the defendants was liable to be removed. The decree passed by the Trial Court was upheld upto this Court. This Court while disposing of the Regular Second Appeal No. 1937 of 2006 filed by petitioner

No. 3 vide judgment dated 6.11.2012 (Annexure P-2) has held as under:-

“Accordingly, the instant second appeal is disposed of by upholding decrees of the courts below to the extent of restraining the defendants by way of permanent injunction from creating any hindrance/obstacle etc. in the disputed passage comprised of khasra no. 122 and the plaintiff shall be entitled to execute this decree for removal of obstacle/hindrance/construction etc. if any found in the disputed passage. The parties are left to suffer their respective costs throughout. ”

The respondents sought execution of the decree by filing execution petition. During the pendency of the execution petition, Local Commissioner was appointed. Local Commissioner submitted his report dated 17.2.2013. Petitioners filed their objections to the report submitted by the Local Commissioner. The Executing Court vide the impugned order dismissed the objections filed by the petitioners. Hence, the present petition by the petitioners.

It has been noticed by the Executing Court while dismissing the objections filed by the petitioners that before the Local Commissioner had proceeded to the spot for demarcation, he had issued notice to both the parties. Presence sheet was prepared. Petitioners No. 2 and 3 were present at the spot when the demarcation proceedings were carried out. As per the report of the Local Commissioner, he had located three *pucca* points fixed at the time of consolidation of holdings. The said points were admitted as correct by the persons who were present at the spot. When the Local Commissioner was cross-examined by the petitioners, he had

specifically denied that permanent point at khasra No. 17/5 had been shifted. Although, the Local Commissioner in his cross-examination has deposed that mustard and wheat crops were standing at the spot and he had fixed the flags and had used the tape from the ground but no suggestion was put to the Local Commissioner that on account of the crops standing at the spot he could not use the tape on the ground for measurement purposes.

So far as the demarcation report dated 20.5.2009 is concerned, the said report relates to the date before passing of the order by this Court. It is possible that when the demarcation report dated 20.5.2009 was prepared, at that time no encroachment was found at the spot but as per the report of the Local Commissioner, who was appointed after the passing of the order by this Court, it was found that the petitioners had encroached an area of 242 square feet bearing *khasra* No. 122. There is no reason to doubt the report dated 17.2.2013 submitted by the Local Commissioner.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 28, 2015
Gurpreet