

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6124 of 2014.
Decided on:-12.5.2015.

M/s Tatvadarsha Bandhu Pvt. Ltd.

.....Petitioner.

Versus

Municipal Corpoation, Faridabad and another

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. Dhiraj Chawla, Advocate
for the respondents.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of the application of the plaintiff, petitioner herein, under Order XXVI Rule 9 CPC for appointment of Local Commissioner vide order dated 22.4.2014, forms genesis of this revision petition. This order of 22.4.2014 was also sought to be reviewed by the plaintiff, petitioner herein, but the said review petition was also dismissed on 19.7.2014. This order of 19.7.2014 vide which the review petition was dismissed has also been impugned in the present revision petition.

2. Learned counsel for the petitioner has contended that when boundaries of different villages viz. Anangpur, Sarai Khawaja etc. have not

been demarcated and fixed as yet, appointment of Local Commissioner for demarcation of the same is necessary. It is claimed that impugned orders suffer from defect of non-appreciation of factual matrix as also the attending circumstances.

3. Counsel for the respondents, on the other hand, has urged that there is absolutely no necessity for appointment of Local Commissioner as in the suit, the plaintiff, petitioner herein, has come with a specific plea of his established possession on the suit land and on such alleged established possession, application under Order XXXIX Rules 1 and 2 CPC for seeking injunction against the defendants, respondents herein, had been filed. Validity and legality of the impugned orders is asserted.

4. Counsel for both the parties have been heard while perusing the paper book and considering the factual matrix and attending circumstances.

5. Counsel for the petitioner seeking support from ***Shreepat Versus Rajendra Prasad and others 2000(3) ICC 728 (Supreme Court)*** has urged that where there is dispute with regard to identity of land as also to the fact whether it falls in a particular Khasra number or not, then appointment of Local Commissioner for establishing identity of the land in dispute, is necessary. However, in the present case, facts are entirely different. The plaintiff had filed a suit for seeking a decree of permanent injunction on his alleged established possession. Copy of plaint (Annexure P-9) clearly reveals that claim of the plaintiff, petitioner herein, is based on purchase of 12 Bighas 10 Biswas (Pukhta) land situated in village Anangpur where particular Khasra number as 1378/1/2 is mentioned. Para Nos.3 and 4 of the plaint for ready reference are appended as below:

“3. That M/s Tatvadarshi purchased land bearing Khasra No.1378/1/2 measuring 12 Bigha 10 Biswa Pukhta situated in

the revenue estate of village Anangpur from Sh. Sirichand son of Mawasi alongwith constructions and boundary walls vide registered sale deed dated 29.3.1996 vide document No.1081 registered with the office of Registrar, Delhi and was given the physical possession. Similarly, M/s Tatvadarshi also purchased an area measuring 12 Bigha 10 Biswa Pukhta out of Khasra No.1378/1/2 from Sh. Sarupa son of Mawasi vide another registered sale deed dated 29.3.1996 registered with the office of Registrar, Delhi with all constructions, boundary walls and with pillars towards eastern side bearing document No.1080. The physical possession was delivered to the purchaser. The copies of both the sale deeds are enclosed herewith.

4. That Sirichand and Sarupa both sons of Mawasi have been co-owners, co-sharers, bisedars in Shamlat land of revenue estate Anangpur in respect of Khewat No.247 all measuring 7124 Bigha 10 Biswa Pukhta situated in the revenue estate of village Anangpur, Tehsil and District Faridabad. Both the vendors were in physical possession of Khasra No.1378/1/2 min measuring 25 Bigha Pukhta out of the said Khewat No.247. They had constructed the boundary walls, rooms, pillars as depicted in the Khasra Girdawri w.e.f. Kharif 1998 to Rabi 2000. The mutation on the basis of both the sale deeds was sanctioned in the name of Tatvadarshi and the possession of the plaintiff company has been shown in the said Khasra Girdawri with constructions thereon. Thus, the plaintiff company is owner in possession of Khasra No.1378/1/2 min 25 Bigha Pukhta situated in the revenue estate of village Anangpur, Tehsil and District Faridabad.”

6. It is evident from the above pleadings that established possession of the suit land has been claimed. Once the plaintiff has come with a specific plea of established possession over a particular land giving particular Khasra numbers, and not even a whisper is made about dispute of identity in the pleadings or in the application under Order XXXIX Rules 1 and 2 CPC, making of subsequent application under Order XXVI Rule 9 read with Section 151 CPC, is nothing but a device to use the agency of the court for collection of evidence for it. The agency of the court cannot be used for collection of evidence for a party. Observations of the lower court

in the impugned order are very apt and with approval in their relevant portion, are reproduced as below:

“The suit has been filed for permanent injunction by plaintiffs that defendants be restrained from interfering into their peaceful possession enjoyment over the suit property and they be further restrained from removing and demolishing the pillars with electoral chimneys over the suit property. In my opinion it is imperative on the part of applicant/plaintiff to prove its case by leading credible evidence. He has to prove that he is actual owner in possession of the suit property and his rights are to be protected from invasion of defendants. It is settled law that both the parties are open to take plea to prove their claim or to contradict others claim but the same has to be supported by evidence. Local Commission can only be appointed to assist the court and not to fill lacuna in case or to create evidence on part of either party. In my opinion in the present case there is no requirement at this time of Local Commission be sent to demarcate the property, prepare the site plan which is primarily obligatory on the part of applicant/plaintiffs. In view of above discussion, the application in hand stands dismissed.”

7. It is further to be noticed that dissatisfied with this order of dismissal of his application, the plaintiff continued with his venture of invoking jurisdiction of the Court for collection of evidence for him and undeterred by the impugned order made an application for review of the said order of 22.4.2014. This attempt of the plaintiff was strongly resisted by the respondent. Sequelly, the review petition of the plaintiff was dismissed on 19.7.2014.

8. Plea of the plaintiff that boundaries of the villages are in dispute, is not a relevant consideration at this stage when the plaintiff has invoked the jurisdiction of this Court making specific assertion that it is in possession of the specific portion of the land purchased from its vendors who were allegedly in possession and thus were competent to deliver

possession to it.

9. Keeping in view the totality of facts and circumstances, the application moved for appointment of Local Commissioner and thereafter, for review is nothing else but a venture of the plaintiff somehow or the other to seek intervention of the court for collecting evidence for it for sustaining and supporting its cause.

10. Sequelly, affirming the impugned orders (Annexures P-2 and P-3), this revision petition, being devoid of merit, is dismissed.

May 12, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

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