

CR-2640-2014

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-2640-2014

Date of decision : 04.02.2016

Jaspal Singh

... Petitioner

Versus

Darshan Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G. S. Punia, Senior Advocate
with Mr. P. S. Punia, Advocate
for the petitioner.

Mr. Anil Shukla, Advocate
for respondents No.1, 2, 13, 18 & 19.

REKHA MITTAL. J.

The present petition lays challenge to order dated 27.01.2014 passed by the Additional Civil Judge (Senior Division), Amloh, dismissing the application of the petitioner for appointment of a local Commission to demarcate the suit land and report regarding possession.

The petitioner claiming himself and his brothers Darshan Singh and Jagjeet Singh (respondents No.1 & 2) to be owner of the suit land detailed in para 3 of the petition has prayed for a decree of possession on the premise that respondents No.3 to 47 who have purchased 22 bighas 2 biswas of land belonging to their father of separate khewat have illegally encroached upon land comprised in khewat No.85

khata No.221 in which the petitioner, Darshan Singh and Jagjeet Singh sons of Mukhtiar Singh are co-owners in equal shares. It is argued that the learned trial Court dismissed the application under a misconception that respondents No.3 to 47 are the co-owners of the petitioner in Khewat No.85 when on the contrary, they have purchased land of khewat N.86. It is further argued that in absence of demarcation of the land in question, it may not be possible for the trial Court to adjudicate effectively qua rights of the parties and to decide if the contesting respondents are in illegal possession of the suit land owned by the petitioner and his brothers.

Counsel for the respondents has supported the order passed by the trial court but has not disputed that the petitioner has filed the suit in respect of land comprised in khewat No.85 whereas respondents No.3 to 47 have purchased land out of khewat No.86.

As the petitioner has claimed possession of the suit land on the plea that respondents No.3 to 47 are in illegal possession of the suit land owned by him and his brothers, the factum of possession cannot be determined except on the basis of demarcation to be conducted by some revenue official. I find merit in the contention of counsel for the petitioner that the learned trial Court dismissed the application under a mistaken impression that the contesting respondents are the co-shares in the land in dispute.

In view of the above, the petition is allowed, the impugned order is set aside and the trial Court is directed to appoint a local

Commission (revenue official) to conduct demarcation at the spot strictly in compliance with the instructions issued by the Financial Commissioner and the provisions contained in High Court Rules and Orders. The trial Court may fix the date and time for demarcation in order to enable the parties to be present on the spot.

(REKHA MITTAL)
JUDGE

February 04, 2016.
Davinder Kumar