

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

-.-

CR 3068 of 2016
Date of decision: 02.05.2016

Hafiz Mohammad Ali through his LR *Petitioner*

Versus

Surinder Singh and another *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Diwan S Adlakha, Advocate
for the petitioner

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

Rekha Mittal, J. (Oral)

The present petition has been directed against the order dated 24.02.2016 passed by the Civil Judge (Senior Division) Yamuna Nagar at Jagadhri whereby an application filed by the petitioner for appointment of local commissioner to conduct demarcation at the spot in order to demarcate the property of the decree holder and that of the petitioner/judgment debtor No. 1, has been dismissed.

Counsel for the petitioner would contend that in case demarcation is conducted at the spot, it would give a clear picture in regard to identity of the property qua which decree holder has staked his claim as well as property of the judgment debtor bearing plot No. 73 in regard whereof sale certificate bearing No. PTC/MO/SC/73/Buria/1167 was issued

by the Custodian Department on 31.12.1960. It is further argued that with conducting of demarcation, dispute between the parties would come to an end for all the times to come.

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

A relevant extract from paras 5 and 6 of the impugned order would read quoted thus:-

“5. Perusal of the case file shows that the DH instituted a suit for permanent injunction against the JD's with respect to suit property as detailed in the plaint of the said suit. Vide judgment and decree dated 08.03.2007, the plaintiff was held to be owner in possession of the suit property and the JD's were restrained from interfering in the possession of the DH over the suit property. The JD's in the said suit had taken a plea that suit property was allotted to him vide sale certificate hearing No. PTC/MO/SC/73/Buria/1167 issued by the Custodian Department on 31.12.1960 and that same is plot No. 73. However, it was observed by the learned trial Court that plot of the JD No. 1 is different from the suit property. Feeling aggrieved with the said decree, the JD No. 1 preferred an appeal before the learned appellate Court and the same was also dismissed vide judgment and decree dated 02.05.2011. Thereafter, objections were also filed by the JD No. 1 in the present execution petition and the same has also been dismissed.

6. Now the present application has been filed by the JD No. 1 with the plea that some revenue officer be appointed as local commissioner with the direction to get the suit property of the DH and that

of the JD No. 1 be demarcated. In the considered opinion of this Court, the JD No. 1 cannot use the Court as tool to collect the evidence to ascertain the exact position of his plot bearing No. 73, when it has already been adjudicated by the learned trial Court as well as by the learned appellate Court that the suit property is different from the property owned by the JD No. 1....”

It is an admitted position of the case that during pendency of the suit, defendant/JD No. 1 raised a similar issue qua identity of the suit property with the allegations that the plaintiff/decreed holder has sought injunction with regard to plot No. 73 which was allotted to him by the Custodian Department. The suit filed by the plaintiff was decreed and the appeal preferred by the judgment debtor was dismissed. The petitioner also preferred a petition against the execution preferred by the decree holder that also came to be dismissed by the executing Court and the order passed by the executing Court has attained finality. Keeping in view determination made in the suit as well as in the objection petition preferred by the petitioner, I do not find any error much less illegality in the impugned order, rejecting prayer of the petitioner for appointment of local commissioner to conduct demarcation at the spot. It appears that by filing the present application, the petitioner sought to reopen the entire matter that has already been determined by the Courts after providing opportunities to the parties to adduce evidence in support of their respective claims. The judgments referred to by counsel for the petitioner in ***Deepak Narula v. Shri Satruhan Dwivedi and others 2014 (2) PLR 167*** and ***Ran Singh and another v. Jagir Singh etc. 2015 (2) PLR 42*** have got no bearing on the facts of the case in hand in view of the discussion made hereinbefore and,

therefore, the petitioner cannot seek any assistance to his contention from the referred authorities.

For the foregoing reasons, finding no merit, the petition is dismissed *in limine*.

(Rekha Mittal)
Judge

02.05.2016
mohan bimbira