

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

CM No.18184-CII of 2016 in
CR No.5285 of 2016 (O&M)
Date of decision : 04.10.2016

Om Parkash

...Petitioner

Versus

Risal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rajesh Kadian, Advocate for the petitioner.

Mr. Sandeep Kotla, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

CM No.18184-CII of 2016

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Order dated 19.08.2016 is hereby recalled and main case is taken on board.

Main Case

This Court vide order dated 19.08.2016 had disposed of the revision petition accepting the contention of the petitioner-Judgment Debtor, for, to the extent that he has sought demarcation of the property in execution of the judgment and decree for possession on the premise that Judgment Debtor was not given any chance or opportunity to examine and

browse the report.

Mr. Sandeep Kotla, learned counsel appearing on behalf of respondent(s) submits that respondent-Decree Holder moved an application for recalling of the order on the premise that suit of the respondent-plaintiff for possession was decreed on 04.06.2005 wherein in paragraph No.1 of the judgment, it was specifically stated that the defendants have raised illegal construction over khasra No.145 as per the area shown red in colour in the site plan Ex.P1. He has drawn the attention of this Court to the copy of the site plan Ex.P1 attached with the suit which is part and parcel of the judgment and decree and as well as execution petition. He submits that said findings was never challenged by the petitioner-defendant in any Court of law. After filing of the execution petition before the Court, notices were issued to the petitioner-Judgment Debtor and the petitioner-Judgment Debtor filed objection and also application for appointment of Local Commissioner just to linger over the matter. Though, Executing Court has no power to reopen and go behind the same.

Per contra, Mr. Rajesh Kadian, learned counsel appearing on behalf of petitioner submits that Local Commissioner inspected the spot and as per the same, there is a dispute with regard to the possession of the property. Order of this Court is perfect legal and justified. He again requested this Court to appoint the Local Commissioner from this Court for ascertaining the factual position.

I have heard learned counsel for the parties and appraised the paper book and of the view that report of Local Commissioner dated 14.09.2016 reads thus:-

“In the above noted case vide order 30.07.2016, I was appointed as Local Commission to demarcate the suit property as comprised in khasra No.145. In compliance of the order dated 30.07.2016 firstly, I on dated 05.09.2016 gave notice of visiting the spot alongwith Halqa Girdawar, Beri and local police, Beri on dated 06.09.16 at about 5:30 pm to the counsels for both the parties but counsels for JDs No.1 to 4 flatly refused to sign on the notice. Then on dated 06.09.16 at about 5:40 PM, I visited the spot alongwith Halqa Girdawar, Beri and local police, Beri. I took the signatures of the persons present on the spot including the applicants namely Risal Singh, Hukam and Rajal @ Rajender but the JD No.1 & 2 (a) to (c) and Kuldeep and Surjeet sons of JDs No.3 who were also present at the spot at the time of demarcation flatly refused to sign on the memo of presence. Halqa Girdawar, Beri demarcated the suit property as comprised in khasra No.145 from three sides in my supervision and the encroachment in the form of old construction of the JDs no.1 to 4 over the suit property was found as it is shown in the site plan Ex.P1 which is already on the record. The site plan Ex.P1 may please be read as site plan of this demarcation report and that is all.

Jhajjar/14.9.16”

whereby the petitioner-Judgment Debtor refused to append the signatures. Report is inconsonance with the site plan. Executing Court cannot go behind the decree rather in my view ought not to have appointed the Local Commissioner but yet report has come in favour of Decree Holder-respondent, which is inconsonance with the site plan Ex.P1.

I am of the view that petitioner-Judgment Debtor are unnecessarily prolonging the execution of the judgment and decree passed

wayback in the year 2005 and again sought time from the trial Court for filing objections to the Demarcation Report, in essence, they are delaying the execution of the judgment and decree of the Courts below. The trial Court/Executing Court should be wary in this regard, rather should not undertake the exercise, as it tantamounts to going behind the decree particularly owing to the report, aforesaid.

I am of the view that this Court ought not to have accepted the request of the petitioner by giving opportunity to them to object to the report.

For the reasons aforementioned, order passed by this Court is hereby recalled and revision petition is accordingly stands dismissed.

04.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No