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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5309-2016 (O&M)

Date of decision : 15.12.2016

Sham Sunder

...Petitioner

Versus

Virender Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Matya, Advocate
for the petitioner.

Mr. Akshay Jindal, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 17.05.2016, whereby the application seeking appointment of the Revenue Officer as Local Commissioner for demarcation of the following khasra numbers:-

“Khasra No.34//6/3/5 (7 marals) & 34//15/1/9 (1 marla) including the plot No.177 measuring 242 sq. yards (8 marlas), the part of above said khasra No's situated in Patel Nagar Colony, Jandli, Teh. & Distt. Ambala and the land of Khasra No's 34//6/3 min & 34//6/2 min including the plot No.178 measuring 242 sq. yards (8 marals) situated in village Jandli Teh. & Distt. Ambala”

to establish the claim in the suit seeking following relief, has been dismissed:

“Suit for a decree of possession of the plot No.177, the part of

Khasra No.34//6/3/5 (0-7), khewat/khatauni NO.1057/1126 and khasra No.34//15/1/9(0-1), khewat/khatauni No.1430/1554-8 marlas (242 sq. yards) situated in Patel Nagar Colony, Jandli Tehsil and District Ambala and as shown in the red colour and marked as ABCD in the site plan attached with the plaint and for mandatory injunction directing the defendant to remove his Malba from the said plot; and for permanent injunction restraining the defendant from alienating, selling, mortgaging, transferring the possession to any other person, except the plaintiff and changing the nature of the suit property of the said plot in any manner whatsoever, Under Order 7 Rule 1 C.P.C.”

Mr. D.S. Matya, learned counsel appearing on behalf of the petitioner-plaintiff submits that in order to establish the possession, no doubt the suit is based upon the title, the best course is to demarcate the property, noticed above. Since, the suit is at the initial stage, the Court below should not have taken away the valuable right, thus, there is gross illegality and perversity. Though the defendant in the written statement had admitted the ownership of his plot bearing No.178. According to the averments in the plaint, he is in possession of excess portion, thus, the assistance of the Court was sought and urges this Court for setting aside the same.

Mr. Akshay Jindal, learned counsel appearing on behalf of the respondent-defendant submits that the plaintiff has to stand on his legs as the suit for possession is based upon the title. Until and unless, he does not lead evidence qua title, such type of application was not maintainable, much less, premature, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that since the suit is at the initial stage of evidence and slated for plaintiff's evidence, the plaintiff at the first instance has to establish the title by leading the evidence which, according to the procedure, would be the best one. After establishing the same in accordance with law,, with the able assistance and wisdom of counsel, the present application for ascertaining possession of such nature should have been moved, but not at this stage. In my view, moving of the application was premature, in case, the plaintiff leads an evidence qua title, he shall not be precluded to move an application at an appropriate stage for seeking the demarcation of the property.

Keeping in view the aforementioned facts and circumstances of the case, the impugned order is upheld.

The findings rendered by the trial Court shall not come into way of the petitioner, in case, any such application is moved at an appropriate stage of trial.

With the aforesaid observations, the revision petition stands disposed of.

15.12.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**