

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

**CR No.5404 of 2016 (O&M)
Decided on: 16.09.2016**

Ram Kumar

....Petitioner

Versus

Dharam Pal through his LRs Kauri and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vikas Mohan Gupta, Advocate
for the petitioner.

REKHA MITTAL, J.

CM No.18539-CII of 2016

Allowed as prayed for.

Documents Annexures P-4 to P-5 are taken on record
subject to just exceptions.

Application stands disposed of accordingly.

CR No.5404 of 2016

The present petition has been directed against order dated 21.07.2016 (Annexure P-1) passed by the Civil Judge (Jr. Division), Hansi (hereinafter to be referred as 'the trial Court') whereby application filed by the petitioner for appointment of local commissioner to demarcate Khasra No.1266 has been dismissed.

The petitioner has filed a suit for possession on the basis of title in regard to plot measuring 1 kanal 10 marlas *gair mumkin* bearing Khasra No.1266 comprised in Khewat No.115 Khataunit No.154 as per Jamabandi for the year 2007-08 situated at village Kothkalan, Tehsil Narnaul, by removing construction raised thereupon by defendants

depicted in Red colour and marked as ABCD in the attached site plan. Further prayer has been made for grant of injunction restraining the defendants not to make any further encroachment or construction over the property.

The instant application was filed by the petitioner on the premise that the defendants in their written statement have denied factum of encroachment and correctness of the site plan. The parties have adduced their respective evidence and to appreciate evidence of the parties, arrive at a right conclusion and do justice, it is expedient that some official of revenue department is appointed to demarcate and find out exact location of Khasra No.1266 and whether there is construction in the said khasra number, if any, and by whom.

After filing of reply by the respondents and having heard counsel for the parties, the application was dismissed for the reasons recorded in para 4 of the impugned order.

Counsel for the petitioner has submitted that the trial Court has dismissed the application primarily on the ground that earlier in the year 1982, during pendency of civil suit No.231-C of 1982, a demarcation was conducted and demarcation report (Ex.D-5) is available in the file pertaining to the said civil suit which is attached with the present proceedings. It is argued that after the year 1982, more than 30 years had passed-away by the time the present suit was filed in the year 2013, therefore, earlier demarcation or report on the basis thereof should not be allowed to stand in the way of a fresh demarcation being conducted in order to make the things crystal clear when otherwise a demarcation by a revenue official/officer would set at

rest the controversy for all the times to come. In order to substantiate his contention, counsel has submitted that the petitioner in the plaint has claimed that Dharam Pal and others sons of Chandgi Lal – defendants have encroached upon Khasra No.1266 by raising construction but the defendants in the written statement in para 5 (concluding lines) have pleaded that they are owners of plot No.1263 and are in possession of the same and they are not in possession of plot No.1266 owned by the petitioner/plaintiff. In support of his contentions, he has referred to judgments of this Court ***“Achhar Chand vs Hari Kishan (deceased) through LR and others”***, 2015(4) PLR 679, ***“Dalbir and others vs Satbir and others”***, 2015(1) ICC 190, ***“Punjab Wakf Board, Amabala Cantt. Vs Shri Neeko”***, 2004(3) RCR (Civil) 506.

I have heard counsel for the petitioner, perused the paperbook particularly the various annexures, the impugned order and the judgments cited at bar.

It is an admitted position of the case that earlier in the year 1982, the petitioner filed a suit against the same defendants with regard to land comprising Khasra No.1266 measuring 1 kanal 10 marla. At that time, an application (Annexure P-5) was filed by the petitioner for conducting demarcation and on the basis of that application, demarcation was conducted at the spot. A demarcation report dated 22.02.1982 was submitted and certain persons namely Darya son of Nathu, Punjab son of Ram Singh, Azar, Sher Singh son of Samera and Hari Singh were found to have encroached upon plot No.1266. Later, the said suit was withdrawn by the petitioner without seeking

determination of his claim against Dharam Pal and others. The present suit has been filed by the petitioner in the year 2013 against those very defendants with regard to the same land. A perusal of the plaint would evident that nothing has been mentioned therein as to when the defendants have encroached upon any part of Khasra No.1266 much less that they have encroached upon the said khasra number after disposal of the earlier suit filed in the year 1982. Further, there is nothing on record to suggest that the petitioner ever raised an issue to challenge correctness of the demarcation report submitted on the basis of demarcation conducted in pursuance of an application filed by the petitioner himself in the year 1981. As the petitioner has not averred that defendants have encroached upon the land in question subsequent to decision of the earlier suit, contention of counsel for the petitioner that a fresh demarcation is required to be conducted due to lapse of about three decades between 1982 to 2013 is misconceived and untenable.

Indisputably, the parties have already adduced their evidence in support of their respective contentions. It appears that the present application was filed by the petitioner with an intent to fill up the gaps and *lacunae* left in his case or rebut the evidence adduced by the defendants/respondents. Under these circumstances, the petitioner cannot derive any advantage to his contentions from the referred authorities which have been decided by the Court in view of its peculiar facts and circumstances. In view of the above, I do not find any reason to intervene in the discretion exercised by the trial Court.

Before parting with this order, it is clarified that after

hearing counsel for the parties on merits of the case, if the trial Court finds that a demarcation at the spot would be a step in the direction of doing substantial justice, the Court would not hesitate to undertake such an exercise merely because it has dismissed the application filed by the petitioner/plaintiff.

Disposed of accordingly.

16.09.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No