

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

CR No.6222 of 2016(O&M)

Date of decision:21.9.2016

Kulwant Kaur and another

....Petitioners

VERSUS

Gurbax Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vipin Mahajan, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 24.05.2016 (Annexure P-3) passed by the Additional Civil Judge (Senior Division), Gurdaspur, whereby application filed by the petitioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (in short 'CPC') for appointment of local commissioner has been dismissed.

Counsel for the petitioners would submit that respondent/defendant has filed a suit for mandatory injunction directing the petitioners to remove the tubewell bore illegally installed/erected in the land of the plaintiff comprising in Rectangle No.5, Killa No.8/3 as per Jamabandi for the year 2005-06, situated in village Ucha Be Chirag, Hadbast No.358, Tehsil and District Gurdaspur, depicted at point X in the site plan attached with the plaint. It is argued that in the suit, an application for interim injunction under Order 39 Rules 1 and 2 read with Section 151 CPC was filed and the same was decided by the trial Court vide order dated 21.02.2012 (Annexure P-3) and the parties were directed to maintain status quo regarding tubewell bore connection till decision of the suit. Kulwant Kaur – petitioner filed an appeal against the order dated

21.02.2012 and the Additional District Judge passed order dated 10.02.2014 (Annexure P-4). Thereafter, Gurbax Singh- respondent filed an application for appointment of local commissioner for demarcation of Killa No.8/3 and same was disposed of by the trial Court without calling upon the petitioner to file reply thereto. It is vehemently argued that before the Court of appeal, it was represented by counsel for the parties that they will move an application before the lower Court for getting the demarcation conducted and the appeal be kept pending but the application for demarcation was filed only by respondent/plaintiff. It is further submitted that land comprising Killa Nos.8/1 and 8/3 was required to be demarcated but the trial Court committed a serious error by getting the demarcation done only of Killa No.8/3 despite the fact that in the order dated 11.03.2014, the local commissioner was directed to demarcate the suit property. It is further submitted that a serious prejudice is likely to be caused to the petitioners in case land consisting Killa No.8/1 is not demarcated in order to find out if area of Khasra No.8/1 is complete or otherwise.

I have heard counsel for the petitioners, perused the paper-book particularly the various annexures appended with the petition.

Gurbax Singh- respondent has filed the suit only qua Killa No.8/3 with the allegations that the petitioners/defendants have installed tubewell bore over his land depicted at point X in the site plan attached with the plaint. Under these circumstances, the suit property is Killa No.8/3 and not 8/1 stated to be owned by the petitioners/defendants.

After the order was passed by the Court of appeal with regard to demarcation (Annexure P-4), respondent/plaintiff filed an application dated 11.03.2014 (Annexure P-5) for demarcation of Killa No.8/3. The

said application was disposed of by the trial Court in presence of counsel for the petitioners/defendants. There is nothing on record suggestive of the fact that the order dated 11.03.2014 was ever challenged by the petitioners on any ground whatsoever. A report (Annexure P-7) was submitted by the local commissioner on the basis of demarcation of Killa No.8/3 in regard whereof claim has been raised by the respondent/plaintiff. The petitioners/defendants submitted objections against the said demarcation report that are pending consideration before the Court below.

Keeping in view the facts and circumstances discussed hereinbefore, I do not find any error much less illegality in the impugned order negating claim of the petitioners for demarcation of Killa No.8/1 for the purpose projected by the petitioner. With the aforesaid observations, the petition fails and is accordingly dismissed.

However, nothing stated in this order shall be construed as an expression of opinion on merits of report of local commissioner or the objections filed by the petitioners that shall be decided by the Court below, in accordance with law.

SEPTEMBER 21, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no