

Civil Revision No.6467 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.6467 of 2016

Date of Decision: 27.9.2016

Parkash Kaur and others

---Petitioners

versus

Atma Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Jagdish Manchanda, Advocate
and Mr. Ravi Gakhar, Advocate
for the petitioners**

Rekha Mittal, J.

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 16.8.2016 (Annexure P-9) passed by the Civil Judge (Junior Division), Fatehgarh Sahib, dismissing application for appointment of Halqa Kanoongo/Patwari for demarcation of the disputed property to ascertain possession/share of the plaintiffs.

Counsel for the petitioners would contend that the petitioners have filed a suit for permanent injunction restraining Atma Singh, respondent/defendant from dispossessing the plaintiffs from property mentioned at letter X of the plaint namely land comprising khasra No. 242 and shamlat deh situated between khasra Nos. 241 and 242, shown in red and blue colour in the site plan attached with the plaint situated at village Nandpur, Tehsil Bassi Pathana, District Fatehgarh Sahib. In the written statement filed by the respondent/defendant, in paras 3 and 4 on merits, it has been averred that land comprising khewat No. 353/357, khatoni No. 599, khasra No. 234 measuring 0-5 marlas is owned and possessed by plaintiff Nos. 2 and 3 and plaintiff Nos. 1 to 3 are in possession over the same. No other shamlat deh or khasra number was owned and possessed by the plaintiffs. The measurement of khasra Nos. 241 and 242 each is 0-5 M and Atma Singh is in possession of the suit property as owner. It is argued with vehemence that keeping in view plea raised in the written statement, appointment of a local commissioner for demarcation of the disputed property would not only be in the interest of parties but would also facilitate just decision of the case. Another submission made by counsel is that no prejudice would be caused to the respondent/defendant in case the

instant application for appointment of Halqa Kanoongo/concerned Patwari to demarcate the property bearing Khasra Nos. 236, 238, 239, 240, 241 and 242 situated at village Nandpur is allowed. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India **Haryana Waqf Board vs. Shanti Sarup and others (2008) Supreme Court Cases 671.** Further reference has been made to judgment of this Court **Jai Bhagwan vs. Rajpal Singh and others CR No. 4183 of 2013 decided on 5.8.2013** wherein the judgment in **Haryana Wakf Board's case (supra)** was relied upon.

I have heard counsel for the petitioners, perused the paper book and various annexures appended with the petition particularly the application for appointment of commission and the order impugned.

The petitioners have filed a suit for injunction with a plea that they are in possession of land described at letter X comprising khasra No. 242 and Shamlat deh situated between 241 and 242, depicted in red and blue colour in the site plan attached with the plaint. On the contrary, respondent/defendant No. 1 has raised a plea in para 3 and 4 as pointed out by counsel for the petitioners. As per the settled position in law, local commission is not to be appointed by the Court in order to ascertain as to

who is in possession of the suit property as that would amount to delegating powers of the Court to a third person. As in the present case, no issue qua encroachment has been raised by the plaintiffs, there is no occasion for getting the land demarcated through process of revenue authorities. As has been rightly observed by the trial court, instant application is nothing but a device to use process of the Court for collecting evidence. Under these circumstances, the petitioners cannot derive any advantage to their contention from the judgments referred to, rendered in peculiar circumstances of the cases.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

27.09.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No