

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.728 of 2014

Date of decision: 14.1.2016

Kishan Dass @ Krishan Dass & anr.

.....Petitioner(s)

Versus

Bhikham Singh

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

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Present: Ms. Satpreet Grewal Kapila, Advocate for the petitioners.

Darshan Singh, J.

1. The present civil revision petition has been preferred against the order dated 8.11.2013 passed by the learned Additional Civil Judge (Senior Division), Dasuya vide which the application moved by the petitioner for appointment of some revenue expert to carry out demarcation of the property in dispute as a Local Commissioner has been dismissed.

2. The petitioners have filed the suit for possession with respect to the land measuring 1 kanal 0 marla forming part of Khasra No.14//19(5-13) comprised of Khata No.837/1208 situated at Village Badla, Hadbast No.626 Tehsil Dasuya and Distt. Hoshiarpur. They have also sought the relief of permanent injunction with respect to the other part of their land. The plaintiffs have sought the relief of possession on the plea that the defendant has encroached upon the aforesaid land.

3. The defendant-respondent has resisted the suit on the ground that he is owner of the adjoining land comprised of Khasra

No.14//9/2(4-2) and 12(8-0) situated at village Badla, Tehsil Dasuya, District Hoshiarpur and he has never encroached upon the land of the plaintiff-petitioners.

4. The notice of this revision petition was issued to the respondent. The respondent was duly served but nobody appeared on his behalf.

5. I have heard the learned counsel for the petitioners and have carefully perused the paper book.

6. Learned counsel for the petitioners contended that there is a disputed question about the demarcation of the suit property. In order to effectively resolve a dispute, the appointment of the revenue expert as a Local Commissioner is required to assist the Court. Thus, she contended that the request of the petitioners for appointment of the Local Commissioner has been wrongly declined.

7. I have duly considered the aforesaid contentions.

8. The plaintiffs are seeking the relief of possession of the land measuring 1 kanal of the land comprised of Khasra No.14//19 (5-13). The suit is being resisted by the defendant-respondent on the ground that he is the owner of the adjoining land and has not encroached upon any portion of the land of the plaintiffs/petitioners. So, definitely the question of demarcation of the land in dispute is involved in the present case which can only be resolved by way of the demarcation of the disputed land by some revenue officer.

9. Order 26 Rule 9 of the Code of Civil Procedure, 1908, provides that in any suit in which the Court deems a local

investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. In the instant case also as the dispute is with respect to the encroachment upon the land which can only be resolved by way of demarcation of the suit property by some revenue expert/officer, so, it is requisite and proper for the purpose of elucidating the matter in dispute to appoint the revenue expert/officer to demarcate the suit property.

10. Thus, keeping in view my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 8.11.2013 passed by the learned trial Court is hereby set aside. The learned trial Court will appoint the competent Revenue Officer as a Local Commissioner to demarcate the suit property who will submit his report to the learned trial Court.

January 14, 2016
ps

(DARSHAN SINGH)
JUDGE