

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

CR No.7977 of 2016(O&M)

Date of decision: 28.11.2016

Ajit Singh

....Petitioner

VERSUS

Roor Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.P. Soi, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 16.11.2016 passed by the Civil Judge (Junior Division), Nakodar whereby application filed under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (in short 'CPC') for appointment of local commissioner for demarcation has been allowed.

The sole submission made by counsel for the petitioner is that as the respondent/plaintiff has filed a suit for permanent and mandatory injunction, allowing the respondent/plaintiff to use process of the Court for demarcation of khasra No.91 would amount to collecting evidence through process of the Court, not permissible in law. In support of his contention, he has relied upon judgment of this Court **Mohanjit Singh Vs. Gagandeep Singh Grewal and others**, 2015(4) RCR (Civil) 617.

I have heard counsel for the petitioner, perused the plaint (Annexure P-1), written statement (Annexure P-2), application for appointment of local commissioner for demarcation (Annexure P-3), reply thereto (Annexure P-4) and the impugned order.

The respondent/plaintiff initially filed a suit for permanent injunction restraining the defendants from encroaching upon rasta shreeram bearing Khasra No.91(1-7) marked ABC and shown in red colour in the site plan. Later, he amended the plaint and prayed for mandatory injunction by adding para 3-A on the premise that defendant No.1 in connivance with defendants No.2 to 6 has encroached upon the public path comprised in Khasra No.91 (1-7) and included the same in his own land for which the defendants have no right. By this illegal act, plaintiff is left with no passage for ingress and egress to his land comprised in Khasra No.32//9/2 and 10/2.

The respondents/defendants have not disputed existence of a rasta in Khasra No.91 (1-7) nor disputed claim of the plaintiff with regard to his ownership of the aforesaid khasra numbers. As the respondent/plaintiff has raised a plea that defendant No.1 has merged the rasta bearing Khasra No.91 (1-7) with his own land, the said fact can be elicited and determined only by way of demarcation of the said khasra number by a revenue officer /official. In this view of the matter, I do not find any reason to interfere in the discretion exercised by the trial Court for the purpose of elucidating the matter in issue.

The judgment cited by counsel for the petitioner was rendered in view of its peculiar facts and circumstances wherein the petitioner/plaintiff has claimed himself to be in exclusive possession of land co-owned by him and his application for appointment of local commissioner was ordered to be dismissed. This Court held that plea raised by the petitioner can be substantiated by producing revenue record and other materials. The discretionary order passed by the civil Court

refusing to appoint a local commissioner to create evidence for the petitioner does not warrant interference.

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

Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

NOVEMBER 28, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no