

204/2.

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

Execution Second Appeal No.8 of 2013 (O&M)

Date of decision:25.05.2016

Umrao

... Appellant

versus

Om Parkash @ Omi and others

.... Respondents

II. Civil Revision No.4925 of 2012

Om Parkash @ Omi

... Petitioner

versus

Umrao

.... Respondent

III. Civil Revision No.6973 of 2013

Umrao

... Petitioner

versus

Om Parkash alias Omi

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Manoj Kumar Sood, Advocate,
for the appellant in ESA No.8 of 2013,
for the respondent in CR No.4925 of 2012 and
for the petitioner in CR No.6973 of 2013.

Mr. Kul Bhushan Sharma, Advocate,
for the petitioner in CR No.4925 of 2012,
for the respondent in ESA No.8 of 2013 and
CR No.6973 of 2013.

K.Kannan, J. *(Oral)*

1. After making elaborate arguments, the counsel for the appellant states that he will seek for no adjudication in ESA and will restrict his right to be decided in the suit which he has filed before the decree holder put the decree in execution. I will record the statement and dismiss the ESA No.8 of 2013 as not necessary for decision.

2. There was an objection taken in independent suit filed by a third party that the suit was not competent. Since the third party pleads for his own independent right to the property unaffected by the decree which the decree holder has obtained against Shankar and the representatives, the suit will be perfectly competent and the objection for rejection of the plaint was correctly dismissed. I see no ground for interference. Civil Revision No.4925 of 2012 in relation to rejection of a plaint is dismissed.

3. There was a prayer before the trial court in the injunction suit that a Commissioner must be appointed to note down the physical features. The court has declined the appointment of a Commissioner because in the suit filed by the decree holder in the other suit, a Commissioner had been appointed. The petitioner was trying to prove that identification of property in both the suits is different. In my view, an appointment of a Commissioner would take a long way to establish what is the particular property with

reference to the boundaries that is presently brought by a third party in his suit and what was property which was brought for adjudication in the earlier suit filed and in relation to which, decree has been obtained. There is an objection that the court has no power to entertain a civil revision against the appointment of a Commissioner. I reject the argument as not tenable. The order rejecting the appointment of a Commissioner is set aside and the Civil Revision No.6973 of 2013 is allowed.

(K.KANNAN)
JUDGE

25.05.2016
sanjeev