

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL REVISION PETITION No.3572 OF 2016

ORDER:

Having heard the submissions of the learned counsel for both sides, it appears that the controversy between the plaintiff and the defendants, i.e., as to whether as per the plaint sketch, the property shown as 'HIJK', was encroached upon by the defendants, who are having their old thatched house towards west of the site of the plaintiff. The suit is filed for mandatory injunction.

The learned counsel appearing for the petitioner/plaintiff submits that since the question involved is as to whether there was any encroachment or not, it is just and proper that an advocate commissioner visits the site and demarcates the same with the help of measurements, so as to localise the area, if any, that has been said to have been encroached upon by the defendants. He placed reliance on the decision of the Hon'ble Supreme Court in **Haryana Waqf Board vs. Shanti Sarup¹**, wherein the Supreme Court observed as under (paragraphs 3 and 4)

3. The dispute that was raised by the parties before the court was whether the respondent had encroached upon any land belonging to the appellant Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land.

4. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial Court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 CPC.

There is no doubt some force in the submission of the learned counsel for the respondents/defendants that the present application has been filed at belated stage inasmuch as entire evidence of both the

¹ (2008) 8 SCC 671

plaintiff and defendants is concluded and the suit is ripe for arguments. However, merely because there is a delay in filing an application seeking appointment of advocate commissioner, the same cannot be rejected if reasonable grounds are shown for appointment of advocate commissioner, which would help the Court below in effectively and properly adjudicating the controversy between the plaintiff and the defendants.

In that view of the matter, the civil revision petition is allowed and the order impugned is set aside. The Court of the Junior Civil Judge, Amadalavalasa, is directed to appoint local advocate as advocate commissioner to visit the suit site and with the help of the plaintiff's sketch to determine as to whether what is mentioned in the plaint sketch is correct or not. The entire process of appointment of advocate commissioner and its report shall be concluded within a period of one month from the date of receipt of copy of this order.

The civil revision petition is accordingly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.K.JAISWAL

21.02.2017
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