

CR No. 255 of 2016 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No. 255 of 2016 (O&M)

Date of decision: 17.3.2017

Major Singh

...Petitioner

Versus

Harbans Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Ritu Pathak, Advocate
for the petitioner.

Mr. Harsh Chopra, Advocate
for the respondents No.1 to 4.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant revision petition is directed against the impugned order dated 27.11.2015 (Annexure P-7) passed by the learned trial court, whereby application of the petitioner for appointment of Local Commissioner was dismissed.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that during the pendency of this very suit, defendants-respondents herein also filed similar application (Annexure P-3), praying for appointment of a Local Commissioner, to visit the site and ascertain the factual position obtaining at the site regarding construction of boundary wall, digging of private water channel, alleged damage caused to the boundary wall, 10 trees standing adjoining the boundary wall as well as height of the boundary wall. The said

CR No. 255 of 2016 (O&M)

application moved by the defendants was not opposed by the plaintiff. However, vide order dated 3.7.2015, defendants sought and was granted permission to withdraw the application. The abovesaid material fact has been altogether ignored by the learned trial court, while passing the impugned order in spite of the fact that it was a part of judicial record. Having said that, this Court feels no hesitation to conclude that the learned trial court failed to appreciate the true factual as well as legal aspect of the matter, because of which the impugned order cannot be sustained.

It is the settled proposition of law that rules of procedures are meant for advancing the cause of justice. Keeping in view the peculiar facts and circumstances of the case, appointment of a Local Commissioner to ascertain the abovesaid material as well as factual position between the parties would certainly facilitate the learned trial court to arrive at judicious conclusion, with a view to do complete and substantial justice between the parties. It shall also avoid multiplicity of the litigation. Under the abovesaid undisputed factual position of the case, it can be safely concluded that the learned trial court committed a serious error of law, while passing the impugned order and the same cannot be upheld, for this reason also.

Coming to the judgment of this Court in **Ranjit Singh and others Vs. Gurbhej Singh and others, 2014 (2) Law Herald 1766**, relied upon by learned counsel for the respondent, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the respondent, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any

CR No. 255 of 2016 (O&M)

codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found contrary to the judicial record, besides suffering from patent illegality, the same cannot be sustained and is hereby set aside. Application of the petitioner-plaintiff for appointment of Local Commissioner would stand allowed.

Parties are directed to appear before the learned trial court on 30.3.2017 and thereafter, the learned trial court shall proceed further with the matter, in accordance with law.

Resultantly, with the abovesaid observations made, instant revision petition stands allowed, however, with no order as to costs.

17.3.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No