

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

CR No.3497 of 2017

Date of decision:15.5.2017

Bikramjeet Singh and another

...Petitioners

Versus

Anil Sandhir and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.S.C.Thatai, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the instance of plaintiffs, filed under Article 227 of the Constitution of India, is directed against the order dated 4.5.2011 (Annexure P-5) passed by the the learned trial Court, dismissing their application for appointment of local commissioner.

Heard learned counsel for the petitioners.

It is a matter of record that plaintiffs-petitioners filed a suit for permanent injunction, wherein one revenue official namely Pritpal Singh carried out demarcation of the suit property, at the instance of the petitioners. He was also their cited witness, as submitted by the learned counsel for the petitioners. However, he submits that neither the demarcation report prepared by Shri Pritpal Singh could be proved on record nor he could be examined as he remained bed-ridden for quite some time and finally he expired on 14.11.2016. Under these circumstances,

placing reliance on three judgments of this Court in Gurpartap Singh @ Gurpavitar Singh Versus Jagmeet Singh, 2015 (1) PLJ 691, Kishan Dass @ Krishan Dass and another Vs. Bhikham Singh, 2016 (3) RCR (Civil) 651 and Nanak Chand and others Vs. Mahender and others, 2017(1) Law Herald 202, learned counsel for the petitioners submits that the application of the petitioners, seeking appointment of a fresh local commissioner, ought to have been allowed by the learned trial court, instead of dismissing their application vide impugned order.

Having considered the learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered view that so far as the impugned order is concerned, it has been found duly supported by sound reasons and the same deserves to be upheld, for the following more than reasons.

Even if the above-said contention raised by the learned counsel for the petitioner is to be accepted that Shri Pritpal Singh remained bed ridden because of which he could not be examined, it was for the petitioners-plaintiffs to move an appropriate application at that very point of time, pointing out that difficulty which was beyond their control because their witness Late Shri Pritpal Singh was bed ridden. However, they did not do so for the reasons best known to them and concluded their evidence.

Thereafter, even evidence of the defendants has been closed. When the case came to be listed for rebuttal evidence, plaintiffs-petitioners woke up from their slumber and moved the application for seeking appointment of local commissioner, with a view to get the demarcation of the suit property carried out. It was the bounden duty of the plaintiffs-

petitioners to prove their pleaded case by leading cogent and convincing evidence. Learned trial court granted them full opportunity.

It is not the argued case on behalf of the petitioners before this Court that they moved earlier application at appropriate time, seeking appointment of local commissioner and said prayer made by them was not allowed by the learned trial Court. Once the petitioners had been sleeping over their right, if any, taking the court for a ride, they cannot be permitted to move such application at this belated stage for appointment of local commissioner, when not only their evidence stood closed by themselves long back but thereafter even the evidence of the defendants has been closed.

It is also not the argued case by learned counsel for the petitioners that they reserved their right under Order 18 Rule 3 of the Code of Civil Procedure for leading any kind of evidence as their rebuttal evidence. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

So far as the judgments relied upon by the learned counsel for the petitioners are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioners, being clearly 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 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 **Padmasundara Rao (Dead) 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.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order has been found based on true facts of the case and it has also been passed, strictly in accordance with law. The impugned order is supported by sound reasons, because of which no fault can be found with it and the same deserves to be upheld, for this reason also.

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 the instant civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

15.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE