

CR No. 3794 of 2017 (O&M)

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

**CR No. 3794 of 2017 (O&M)
Date of decision: 24.5.2017**

Dharam Raj Yadav

...Petitioner

Versus

Ram Lakhan Yadav and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Plaintiff, by way of present revision petition filed under Article 227 of the Constitution of India, is challenging the order dated 18.4.2017 (Annexure P-8) passed by the learned trial court, whereby Local Commissioner was appointed, allowing application of the defendants for inspecting the suit property, it being joint and un-partitioned residential house.

Heard learned counsel for the petitioner.

Facts are hardly in dispute. Suit property is joint and un-partitioned. Suit filed by the plaintiff-petitioner is for separate possession by way of partition by metes and bounds and also for permanent injunction, restraining the defendants from demolishing any part of building constructed by the plaintiff. Plaintiff-petitioner has concluded his evidence. It was

during the course of evidence of defendants when they moved an application before the learned trial court for appointment of the Local Commissioner, so as to visit and inspect the site in presence of both the parties. It was this application which was allowed by the learned trial court vide impugned order.

A bare perusal of the impugned order would show that the learned trial court has appointed a Local Commissioner and directed him to ascertain the actual and factual position at the site, after serving notice to the opposite party, i.e. plaintiff-petitioner and that too, two days in advance. Further, inspection report, which shall be furnished by the Local Commissioner, will not be binding on the court as such. Having said that, this Court feels no hesitation to conclude that the learned court below was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

The argument raised by learned counsel for the petitioner that defendants were not entitled to collect evidence through assistance of the court, has been found wholly misplaced, keeping in view the peculiar fact situation obtaining on record of the case. Learned counsel for the petitioner places reliance on the following judgments of different High Courts, including this Court:-

- 1) Bhagwan Dass Vs. Krishan Chand and another, 2017 (1) Law Herald 354 (P&H)
- 2) Gurpartap Singh @ Gulpavitar Singh Vs. Jagmeet Singh, 2015 (1) PLJ 691 (P&H)
- 3) Harwinder Kumar Vs. Nasib Singh and others, 2015 (2) Law Herald 1727 (P&H)
- 4) Smt. Ulfat Vs. Hardeep Singh, 2011 (4) PLR 340 (P&H)

- 5) Ranjit Singh and others Vs. Gurbhej Singh and others, 2014 (37) RCR (civil) 97 (P&H)
- 6) Banarsi Dass Vs. Sunita Rani @ Sarita Rani and others, 2017 (2) RCR (civil) 274 (P&H)
- 7) M/s Jain Instruments and Equipment Company Vs. Devinder Singh Sandhu, 2014 (4) RCR (civil) 338 (P&H)
- 8) Mahendranath Parida VS. Purnananda Parida, 1988 AIR (Orissa) 248 (Orissa High Court)
- 9) Ram Prasad Mishra Vs. Dinabandhu Patri and another, 2012 (50) RCR (civil) 942 (Orissa High Court)
- 10) Satish Aggarwal Vs. Tirath Singh, 1996 WBLR 23 (Calcutta High Court)

So far as the abovesaid judgments relied upon by learned counsel for the petitioner are concerned, there is no dispute about the observations made and law laid down therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioner, 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 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.**

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in

Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. *"12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leatham (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since*

the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by

treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham* (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases,

one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it

Ed. See *Union of India VS. Amrit Lal Manchanda*, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to the facts of the present case, let it be reiterated at the cost of repetition that report of the Local Commissioner cannot be said to be a piece of evidence in favour of either of the parties. It is meant only to facilitate the learned trial court to arrive at a judicious conclusion. It also goes without saying that if the report of Local Commissioner is not found reasonable and any of the parties feels aggrieved against it, said party would always be at liberty to file its objection, which shall be considered and decided by the learned trial court, by passing an appropriate order. In this view of the matter, no fault can be found with the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not 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. In fact, the impugned order has been found duly supported by sound reasons and the same deserve to be upheld.

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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 present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

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

24.5.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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