

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

CR No.4439 of 2017

Date of decision : 31.07.2017

Ram Lal

...Petitioner

Versus

Smt. Ganga Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Johan Kumar, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The Judgment Debtor is the petitioner in the present revision petition.

The plaintiffs-Decree Holders had filed a suit for possession which was decreed on 03.07.2015. Judgment Debtor-defendant filed an appeal which was withdrawn by the petitioner when the parties made a statement that demarcation shall be carried out and if the defendant is found to be in unauthorised possession, he shall vacate the same. The appeal was dismissed as withdrawn vide order dated 08.10.2015.

Learned counsel for the petitioner has asserted that on 15.03.2016, demarcation was carried out. However, no encroachment was found on the part of the petitioner. He further submits that another

application for appointment of Local Commissioner was filed and another Local Commissioner was appointed without setting aside the first report of the Local Commissioner. He further submitted that without setting aside the earlier report, second Local Commissioner cannot be appointed.

I have considered the submissions made by the learned counsel for the petitioner and have also seen the order passed by the Court appointing another Local Commissioner. The relevant part of the order dated 16.08.2016, reads as under:-

“3. After going through the contents of the application it comes to the considered opinion of this Court that after passing the judgment dated 3.7.2015 JD preferred an appeal and in that appeal it was agreed between both of the parties that DHs will file an execution petition and fresh demarcation of the suit property will be carried out and at that time delivery of warrant of possession will be executed. In fact after moving an application for demarcation of the suit property the court appointed Local Commissioner to demarcate the suit property but JDs in order to cause wrongful loss to DH have removed the pucca points illegally. So unless and until those pucca points be found out the demarcation of the suit property cannot be conducted properly. So considering the same and contention of the Ld. Counsel for DH that when pucca point has been destroyed then it become necessary to get demarcation of the suit property through total station machine. Hence Halqa Girdawr is hereby appointed as Local Commissioner who shall get arrangement of total station machine for demarcation of the suit property as per compromise. Requisite expenses

of total station machine shall be born by the DH and will be paid on the spot after demarcation. Now to come up on 13.9.2016 for awaiting report of Local Commissioner. Copy of this order be sent to Local Commissioner.”

It is clear from the reading of the order passed on 16.08.2016 that since consolidation pillars were not found while conducting previous demarcation, therefore, the Court ordered demarcation of the suit property through total station machine which is a lazer based demarcation machine once again.

Once the new technology is available and, fresh demarcation has been carried out, no fault can be found with the order passed by the Court.

The order passed by the learned court on 16.08.2016 is well-reasoned. The learned Court has found that in fact, the Judgment Debtor had removed the consolidation pillars/pucca point from where the demarcation was to be started or could be verified. Since, these pillars have been destroyed, therefore, fresh Local Commissioner was appointed to carry out the demarcation through total station machine.

In this case, Judgment Debtor-petitioner had gracefully entered into the settlement with the Decree Holder and withdrawn his appeal by making a statement that if the defendant is found in unauthorised possession, he would remove the construction vide order dated 08.10.2015. However, till date, even after lapse of almost two years, Judgment Debtor-petitioner has not honoured the commitment.

The learned Court after considering all aspects of the matter

have ordered dismissal of the objections filed by the petitioner-Judgment Debtor against the report of the Local Commissioner.

I do not find any illegality and perversity in the orders passed by the Courts below.

Accordingly, present revision petition is dismissed.

31.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No