

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6417 of 2015 (O&M)
Date of decision: 21.09.2017

Shree Gurudwara Sahib Village Badrukhan

... Petitioner

Vs.

Malkiat Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: None for the petitioner.

Mr. M.K. Singla, Advocate
for respondent No.1.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 08.07.2015 (Annexure P-7) passed by the learned trial Court, whereby application of the plaintiff-petitioner for appointment of a revenue official as Local Commissioner to visit the site and demarcate the suit property was dismissed, plaintiff has approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and in the meantime, further proceedings before the learned trial Court were stayed.

Neither anybody has come present on behalf of the petitioner to press this present revision petition nor any request for pass over has been

made.

Heard learned counsel for the respondent.

Bare perusal of the impugned order passed by the learned trial Court would show that application moved by the plaintiff-petitioner was dismissed by the learned trial Court without appreciating the true factual aspect of the matter, particularly nature of the suit property. It is the specific allegation of the plaintiff against the defendants that the defendants have encroached upon the property of Shree Gurudwara Sahib-plaintiff. It was for this reason that necessity arose for moving the application for appointment of a revenue official as Local Commissioner, so as to demarcate the suit property. In such a situation, the application moved by the plaintiff-petitioner ought to have been allowed by the learned trial Court. It is so said because in the peculiar facts and circumstances of the case, concerned revenue official would have furnished the demarcation report before the learned trial Court and that would have facilitated the learned trial Court to arrive at a judicious conclusion, so as to do substantial justice between the parties. However, since the learned trial Court misdirected itself, while passing the impugned order completely ignoring the abovesaid crucial aspect of the matter, the impugned order cannot be sustained.

No prejudice, of any kind, was going to be caused to the defendants in appointing the concerned revenue official as Local Commissioner for the purpose of demarcation of the suit property. It goes without saying that said Local Commissioner would have issued notice to both the parties and demarcation would have been carried out in presence of

the defendants as well. Further, defendants would have been entitled to raise their objections even against the report submitted by the Local Commissioner and said objections would have been disposed of by the learned trial Court, in accordance with law. In fact, the defendants-respondents are trying to oppose appointment of the revenue official as Local Commissioner so that they may not get exposed after correct demarcation of the suit property, because allegation against the defendants is that they have encroached upon the property of the plaintiff. Under these circumstances, it can be safely concluded that the learned trial Court failed to exercise the jurisdiction vested in it, because of which a serious prejudice has been caused to the plaintiff-petitioner, thus, the impugned order cannot be sustained, 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 since the impugned order has been found suffering from patent illegality and perversity, it cannot be sustained. Accordingly, the impugned order dated 08.07.2015 (Annexure P-7) is hereby set aside.

Application moved by the plaintiff-petitioner for appointment of a revenue official as Local Commissioner would stand allowed and concerned Naib Tehsildar is appointed as Local Commissioner. He shall visit the site after notice to both the parties and shall carry out demarcation of the property in presence of both the parties. Thereafter, he shall furnish his demarcation report to the learned trial Court.

The learned trial Court shall proceed further with the matter to

decide the suit, in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, present revision petition stands allowed, in the abovesaid terms.

[RAMESHWAR SINGH MALIK]
JUDGE

21.09.2017
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No