

257 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6613 of 2016 (O&M)

Date of decision: March 30, 2017

Sukhbir Singh

...Petitioner

Versus

Hukam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Arvind Singh, Advocate
for the petitioner.

Mr. S.S. Virk, Advocate
for the respondents No.1 to 7.

JASPAL SINGH, J.

By virtue of the instant civil revision preferred under Article 227 of Constitution of India, petitioner has sought quashing/setting aside of the impugned order dated 16th August, 2016 passed by the trial Court in Civil Suit No.RBT-345 of 2013 titled as *Sukhbir Singh Vs. Hukam Singh and others* and to allow the application filed by the petitioner for leading additional evidence, in order to examine a revenue official i.e. Tehsildar regarding the digging of the earth by the respondents/defendants upto a level of ten feet.

The contention of learned counsel for the petitioner is that the parties are related to each other and have inherited the property in suit as well other land from a common ancestor and are in their respective possession of the specific area of land. The respondent/defendant, who are in possession of the land in dispute, have sold earth for digging the same upto a level of ten feet. As such, the land in their possession has become

uncultivable and at present, it is in the shape of big pit. The petitioners had earlier filed a suit for permanent injunction which was decreed but the defendants had removed the earth from the suit property. Thereafter, the petitioner filed an execution application titled as *Sukhbir Singh Vs. Prabha through his LRs and others* wherein Krishan Lal had made a statement to the effect that he will retain his share of land fallen in the family settlement as he had removed the earth therefrom. It has further been argued by the learned counsel for the petitioner that after having sold the earth from their share of land, the defendants/respondents are having an evil eye on the land which is in cultivating possession of the petitioner since the time of his forefathers, as a private partition which took place in the year 1961-62. The defendants are contesting the suit by filing the written statement. During the course of evidence before the trial Court, the petitioner filed an application for appointment of the Local Commissioner to determine the existing position of the suit property in order to enable the trial Court to come to a definite conclusion as to from which Khasra number of the land in dispute, defendants have removed the earth upto a level of ten feet as they are not admitting the said fact. That application was dismissed by the trial Court vide order dated 20th October, 2014. Thereafter, a revision petition preferred against the said order was also dismissed by this Court vide order dated 15th September, 2016 on the technical ground that a revision against an order dismissing an application for appointment of Local Commissioner is not maintainable. Thereafter, petitioner moved an application dated 17th November, 2014 before Tehsildar for demarcation of the suit land and the same was completed and handed over to the petitioner on 9th February, 2015

and in the meantime, the evidence of the petitioner was closed on 1st December, 2014. Since the documents with regard to demarcation of the land were handed over to the petitioner on 9th February, 2015 i.e. after the closure of his evidence, he moved an application for permission to adduce additional evidence but that was dismissed by the trial Court vide order dated 16th August, 2016 which necessitated the filing of the instant revision. In fact the impugned order dated 16th August, 2016 is patently illegal and is liable to be *set aside* as the only reason given in the order is that the report was prepared on 21st November, 2014, whereas the evidence of the petitioner was closed on 1st December, 2014. In fact, the report was prepared on 9th February, 2015 and therefore, the impugned order is patently wrong. Moreover, the trial Court has failed to appreciate that it is the case of the petitioner that the land in dispute has fallen to the share of the defendants is ten feet low from the level of the land in possession of the petitioner and therefore, it was necessary to ascertain the status and nature of the said land, especially in the circumstances that the defendants have completely denied the removal of earth. Moreover, evidence sought to be adduced by way of evidence was neither in possession of the petitioner on the day his evidence was closed nor respondents are going to be prejudice in any manner, rather production of the documents and examination of Revenue Officer who conducted demarcation would clinch the matter in controversy. As such, impugned order dated 16th August, 2016 passed by the trial Court dismissing the application for additional evidence being against law and facts is liable to be *set aside*. Consequently, an application moved by the petitioner for permission to adduce the evidence deserves to be allowed.

On the other hand, learned counsel for respondents No.1 to 7 Mr. S.S. Virk, has supported the impugned order dated 16th August, 2016 and has submitted that the same is absolutely in consonance with the legal proposition applicable to the facts and circumstances of the case in hand and as such, it does not call for any interference by this Court.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned order as alleged the denial of additional evidence i.e. the other documents available on file, this Court is of the considered view that the impugned order dated 16th August, 2016 is absolutely in consonance with the legal proposition applicable to the facts and circumstances of the case in hand. Undoubtedly, an application for appointment of Local Commissioner i.e. Revenue Officer was made for getting the land in question demarcated and to obtain report with regard to nature and status of the disputed land but that application was dismissed. Not only this, even revision preferred against the order of dismissal of the application for appointment of Local Commissioner was also dismissed by this Court vide order dated 15th September, 2016 passed in Civil Revision No.814 of 2015 (O&M). It was only thereafter, petitioner adopted a novel device in order to circumvent the orders passed by the trial Court whereby an application for appointment of Local Commissioner was dismissed as well as passed by this Court on 15th September, 2016 whereby revision petition was dismissed by this Court. Moreover, an application preferred before Tehsildar for demarcation and obtaining of report dated 21st November, 2014 is nothing but an attempt to achieve the object in an indirect way which can be achieved in a direct

manner. Moreover, the Revenue Officer cannot pass any order over and above orders passed by the Civil Court which has since been upheld by this Court vide order dated 15th September, 2016. No party can be permitted to collect the evidence by way of appointment of Local Commissioner. Otherwise also, by way of an application for additional evidence, petitioner intends to fill up the lacunae which is not permissible under law.

In the light of aforesaid discussion, this Court finds no merit in the instant petition. As such, the same is dismissed but with no order as to costs.

March 30, 2017
m. sharma

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No