

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 7708 of 2016

Date of Decision:3.10.2017

Ajmer Singh

---Petitioner

vs.

Gurmail Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Yogesh Kumar Aneja, Advocate
for the petitioner

Mr. Arvinder Singh Khosa, Advocate
for respondent Nos. 1 to 7

Rekha Mittal, J.

The present petition has been directed against order dated 4.10.2016 (Annexure P-10) passed by the Additional Civil Judge (Senior Division), Fazilka whereby objections against the report of local commissioner dated 22.11.2014 (Annexure P-5) have been dismissed.

The sole submission made by counsel for the petitioner is that as the petitioner has not been allowed an opportunity to examine the local commissioner and adduce other evidence to substantiate his contentions raised in the objection petition, impugned order cannot stand the test of

judicial scrutiny and liable to be set aside. For this purpose, he has relied upon judgments of this Court **Chander Parkash vs. Ved Parkash and others 1991-1 Volume XCIX 606** and **Ram Murti Goyal, Advocate and others vs. Smt. Basant Kaur and others 1991 PLJ 147**. Further reference has been made to judgment of the Himachal Pradesh High Court **Om Parkash vs. Ved Parkash and others AIR 2000 Himachal Pradesh 45**.

Counsel for the respondents, on the other hand, has refuted contentions of the petitioner by contending that the local commissioner was appointed under Rule 9 of Order 26 of the Code of Civil Procedure (in short 'the Code'), therefore, objections to local commissioner's report is to be examined alongwith other evidence adduced by the parties. It is further submitted that the petitioner never made a prayer for examination of the local commissioner before his objection petition was decided by the Court, therefore, any prayer made by the petitioner to examine the local commissioner after decision of the objection petition does not entitle the petitioner to find fault in the order passed by the trial court.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Perusal of the order impugned would make it evident that suit filed by the petitioner for grant of permanent injunction was dismissed by the trial court on 7.8.2015. The judgment and decree passed by the trial court was challenged in appeal before the Court of District Judge. The Appellate Court vide order dated 13.7.2016 (Annexure P-9) set aside the judgment and decree passed by the trial court, remitted the case to the trial court with directions to decide the matter afresh after deciding the

objections on report of local commissioner, in accordance with law and thereafter to pass a fresh judgment. After remittance of the case by the Court in Appeal, the petitioner did not make a prayer for examination of the local commissioner for the purpose of his cross examination on the basis of objections raised in the objection petition that remained pending at the time of final adjudication of the suit vide judgment and decree dated 7.8.2015. The trial court heard the parties at length and negated plea of the petitioner assailing report of the local commissioner on several counts.

Counsel for the petitioner has not disputed that after the Court has given its decision to dismiss the objection petition, at that stage, counsel for the petitioner has submitted that he wanted to examine local commissioner as a witness. There is no mandatory requirement in law that the local commissioner appointed under Rule 9 must be examined before deciding the objections against his report. However, the Court may permit examination of the local commissioner either suo moto or on a request made by a party having grievance against report of the local commissioner to elicit the objections raised by him or the parties.

As in the case at hand, the local commissioner was appointed under Order 26 Rule 9 of the Code, the petitioner cannot derive any advantage to his contention from what has been envisaged under Order 26 Rule 14 of the Code and the judgments passed by this Court, **Chander Parkash's case (supra)** and **Ram Murti Goyal, Advocate and others' case (supra)** and judgment of the Himachal Pradesh High Court **Om Parkash's case (supra)** wherein the Court had dealt with report of a local commissioner appointed under Order 26 Rule 14 of the Code that deals with

appointment of local commissioner for partition of immovable property. In this view of the matter, I do not find merit in contention of the petitioner that the order impugned cannot be allowed to sustain as the Court below has not permitted the petitioner to lead evidence to prove his objections in the light of judgment in **Chander Parkash's case (supra)**.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

3.10.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No