

C.R. No. 975 of 2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 975 of 2017

DATE OF DECISION:13.02.2017

Gajraj

.....Petitioner

Versus

Subey Singh

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.K. Bawa, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 2.12.2016 (Annexure P-1) passed by learned Civil Judge (Junior Division), Pataudi, vide which, the objections to the Demarcation Report dated 25.7.2016 filed by the petitioner as well as for appointment of another Halqa Patwari for conducting new demarcation was dismissed.

Learned counsel for the petitioner contends that the application has wrongly been dismissed and the impugned order is contrary to the ratio of judgments of this Court rendered in **Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander** 1989 (1) PLR 677, **Ram Murti Goyal, Advocate and others Vs. Smt. Basant Kaur and others** 1991 (2) RRR 142 and **Roshan Lal Vs. Jai Singh and others** 2015 (4) RCR (Civil)

1032. Learned counsel further contends that after dismissal of the application moved by the petitioner, he will not get any opportunity to move other application subsequently, in case any objection is there. The application moved by the petitioner should have been kept pending or liberty should have been given to move application subsequently.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order dated 2.12.2016.

In the impugned order, it has been mentioned that in case any clarification is required, the local commissioner can be examined personally in an open Court either by the Court itself or by any of the parties with the permission of the Court as per Rule 10 Order 26 CPC and objections of any of the party can be considered after examination of the local commissioner as well as at the time of final argument of the suit. It is also mentioned that there is no provision for setting aside the report of the local commissioner at the outset without cross-examination. In the present case, local commissioner-Arjun Singh, Halqa Patwari was appointed by the Court and appointment of local commissioner for demarcation of the suit property was well within the knowledge and notice of the defendant. The impugned order does not say that the petitioner will not get any opportunity to cross-examine the local commissioner. As per provisions of sub rule 2 of Rule 10 Order 26 CPC, the local commissioner is to be examined personally in an open Court either by the Court itself or by any of the parties with the permission of the Court. The objection, if filed by the parties, shall be considered after cross-examination of the local commissioner, if any, by the Court under Rule 10 of Order 26 of CPC and that too along with other evidence at the time of final hearing of the case. It cannot be said that the

petitioner has been deprived of any right as dismissal of application does not mean that the petitioner will not be allowed to put any question to the local commissioner. Local commissioner is a witness like other witnesses and the petitioner will get an opportunity to cross-examine him.

Accordingly, the impugned order dated 2.12.2016 (Annexure P-1) passed by learned Civil Judge (Junior Division), Pataudi is not going to effect the rights of the petitioner in any manner and the petitioner would be at liberty to put any question to the local commissioner during trial.

Disposed of accordingly.

February 13, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes