

**RA-CR No.141-CII of 2017 in
CR No.4084 of 2015**

Sooba Singh Vs. Rakesh Kumar and others

Present: Mr. Naveen Sharma, Advocate
for the applicant/petitioner.

[1]. This review application has been preferred by the applicant/petitioner under Section 114 CPC for reviewing the order dated 08.08.2017 passed by this Court in the revision petition i.e. CR No.4084 of 2015.

[2]. Learned counsel for the applicant/petitioner submitted that the case was fixed for 08.08.2017 and at the relevant time, he was busy in some other case before the Co-ordinate Bench and he could not attend the case when the same was called out by this Court. At the first instance, it came to the notice of the counsel that the case was dismissed in default, but later on it transpired that it was dismissed on merits in the absence of the counsel. Learned counsel contended that his absence was not intentional.

[3]. Perusal of the record reveals that the case was passed over on two occasions, but none of the parties appeared. The Court considered the case on merits, keeping in view the pendency of the revision petition since the year 2015 and dismissed the revision petition on merits. In order to give fair opportunity to the petitioner, today also, he was offered to address arguments on merits afresh.

[4]. Learned counsel for the applicant/petitioner argued the case on merits, thereby submitting that the impugned order dated

29.05.2015 passed by Civil Judge (Junior Division), Ludhiana was illegal inasmuch as that the identity of the land could have been established by way of demarcation. Petitioner is owner of plot measuring 153 sq. yards comprised in khewat/khatuni No.441/449, khasra No.705/706 as per *jamabandi* for the year 2004-05 situated in the revenue estate of village Taraf Mahal Baghat, whereas plaintiff/respondent is owner of plot measuring 138 sq. yards comprised in khasra No.45/23, khewat No.2838, khatauni Nos.3195 to 3208 as per *jamabandi* for the year 2005-06 in village Taraf Karabara.

[5]. Trial Court found as a matter of fact that the demarcation, if any, would not provide any relevant conclusion as the earlier demarcations i.e. demarcation by Naib Tehisldar, Pritpal Singh and one more demarcation had yielded no positive result.

[6]. While deciding the case on 08.08.2017, this Court has noticed that the plaintiff filed a suit for declaration claiming himself to be owner in possession of plot No.229 measuring 138 sq. yards on the basis of sale deed dated 02.06.2010 executed by defendant No.4. Restraint was sought against defendants No.1 to 3 from interfering in the possession of the plaintiff in the suit plot. Plaintiff has also projected the ownership of the defendant in some distinct plot in village Taraf Mahal Baghat. Defendant being a Municipal Counselor intended to grab the property of the plaintiff by virtue of his status.

[7]. The prayer for appointment of Local Commissioner cannot be entertained as the Court cannot be instrumental in providing any platform to the parties to collect evidence by means of Local

Commissioner. Even otherwise, the land situated in village Taraf Mahal Baghat cannot be presumed to be having any effect on the land situated in village Taraf Karabara.

[8]. In my considered opinion, the order dated 08.08.2017 cannot be faulted with as the plot of the plaintiff and that of the defendant are *prima facie* distinct plots and are situated in distinct localities. The demarcations already conducted will be relied upon in the evidence which will be proved in accordance with law before the trial Court. At this juncture, it is not the duty of the Court to collect evidence for either of the party. Two demarcations have already been conducted and the same shall be relied upon in accordance with law at the relevant stage.

[9]. In view of above, no interference is called for in the order dated 08.08.2017 on merits. Consequently the impugned order dated 29.05.2015 is affirmed.

(RAJ MOHAN SINGH)
JUDGE

31.08.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No