

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.1403 of 2018 (O&M)

Date of Decision:01.03.2018

Birbal Dass and another Petitioners

Vs.

Darbara Singh and others Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. S.S. Salar, Advocate
 for the petitioner.

RAMENDRA JAIN, J. (Oral)

This is a completely frivolous petition filed under Article 227 of the Constitution of India assailing order dated 15.02.2018 (Annexure P.1) of trial Court allowing application of the respondent- defendant for appointment of Local Commissioner to report regarding actual and factual possession in existence at the spot.

In nutshell, the petitioners filed a civil suit for permanent injunction for restraining the respondents from interfering into suit land measuring 52 kanals 8 marlas, claiming their exclusive possession over the same, pleading that the partition proceedings were already pending between the parties.

Upon notice, the respondent- defendant instead of filing written statement, moved an application for appointment of Local Commissioner to report about the existing state of affairs, claiming that there was a common dividing Butt (boundary) in the middle of killa (khasra) nos.11//5 and 11//6 while denying the claim of the petitioners.

The trial Court after hearing both the sides, vide impugned well reasoned and speaking order dated 15.02.2018, allowed the said application of the respondents for appointment of Local Commissioner. The relevant portion of the impugned order is reproduced hereunder for reference:-

“The question of existence of Butt (boundary) is an evidence of such a nature, which can only be properly adduced, regarding its exact location, through the mouth of an expert revenue official. Though, the parties might lead their independent evidence regarding existence of a Butt, yet, the same would be a weak kind of evidence, which would not show as to where the exact location of the Butt is. In these circumstances, in order to do substantial justice and in order to avoid creeping into evidence of manner inconsistencies, it is necessary to appoint the revenue official as an expert Local Commissioner with the direction to **report about the actual and factual position** and to **report whether there exists Butt in middle of khasra no.11/5 and 11/6**. Accordingly, the application is allowed. The Halqa Qanungo is appointed as Local Commissioner with the direction to report about the following matter:

1. To report whether there exists a common Butt between khasra nos.11//5 and 11//6?
7. It is clarified that the Local Commissioner shall not mention in his report about possession of either sides over any portion out of the suit land. The demarcation be carried out strictly in accordance with the High Court Rules and Orders

and the instructions of the Financial Commissioner, Revenue issued from time to time. His fee is assessed as Rs.2500/- to be borne by the defendants. Let report be submitted in the Court on 05.03.2018.”

Learned counsel for the petitioners has not been able to point out any infirmity or illegality in the impugned order. He has simply submitted that report of the Local Commissioner would create confusion and may also lead to multiplicity of proceedings, but this Court do not find any substance in the above submission of learned counsel for the petitioner inasmuch as Local Commissioner's report would definitely help the trial Court in effective adjudication of the real controversy between the parties.

In view of the discussion above, the revision petition is dismissed.

March 01, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No