

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3370 of 2015(O&M)
Date of Decision-26.09.2018

Shan Chand and others ... Petitioners
Versus
Dina Nath through his LRs and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gaurav Chopra, Advocate
for the petitioners.

Mr. Amandeep Agnihotri, Advocate
for respondents No.1 to 3.

Mr. Mohit Jaggi, Advocate
for respondent No.7.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 15.01.2015 passed by Civil Judge (Junior Division), Rajpura, vide which application dated 03.03.2014 for rectification of order dated 13.02.2014 was dismissed.

[2]. Modification of the order dated 13.02.2014 was sought before the Civil Judge (Junior Division), Rajpura by highlighting that report dated 15.03.2013 submitted by the Local Commissioner was totally misread while passing the order dated 13.02.2014. Order dated 18.02.2014 passed by the trial Court was also challenged vide which warrant of possession was issued after passing the order dated 13.02.2014. Directions were also sought to restore possession of plot No.2 as shown in

demarcation report and also to declare sale deed dated 29.09.2014 as illegal, null and void.

[3]. Brief facts of the case are that Dina Nath son of Mehma Ram predecessor-in-interest of respondents No.1 to 3 filed a suit for permanent injunction, restraining the defendants/petitioners from interfering in the peaceful possession of the plaintiffs in plot No.1 shown by letters ABCD in the site plan situated at Basti Noongran, Bassi Bandian, Banur, Tehsil Rajpura, District Patiala. Dimensions of the plot were given as under:-

North: Vacant site and room of the plaintiff;

South: Open space *shamlat*;

East: Open space *shamlat*; and

West: Street.

Plaintiff alleged in the plaint that the plot was allotted to his father Mehma Ram by Rehabilitation Department who remained in possession till his death. After the death of Mehma Ram, the plaintiff came in possession of the plot. He alleged that the plot in question is being used for thrashing crops of small farmers of the locality and also for restoring cow dung cakes. Defendants have no concern with the plot and they wanted to occupy the same forcibly by raising construction.

[4]. The suit was contested by the defendants on the ground that site in question was purchased by them from

Rehabilitation Department in the name of Shanti Sarup who had transferred his rights in favour of the defendants. They denied possession of the plaintiff, rather claimed themselves to be in possession. The allotment in favour of Mehma Ram was denied. They alleged that different plot was allotted to Mehma Ram which is in possession of his other son Baldev Krishan. Defendants have already dug foundation over the plot. Plot No.1 was claimed to be different site and the site in possession of the defendants was intentionally included in the suit as suit property.

[5]. Trial Court found that the defendants have not adduced any relevant evidence to show that any plot No.2 existed at the spot which was property of the custodian and was allotted to Shanti Sarup. The existence of plot No.2 was found to be doubtful. Trial Court decreed the suit of the plaintiff, thereby restraining the defendants from interfering in the possession of the plaintiff by raising construction in plot No.1 vide judgment and decree dated 11.06.1987.

[6]. Defendants/petitioners filed an appeal before the Additional District Judge, Patiala. Lower Appellate Court discussed the material on record in para Nos.8 and 9 to the following effect:-

“8. Gurmukh Pawar, Sales Clerk, Rehabilitation Department, Tehsil Office, Rajpura DW 1 stated that plot No.2, which was evacuee property, was purchased by Shanti Sarup son of Kasturi Lal for Rs.23,000/- Ex.DW1/B is

the sale certificate issued in favour of Shanti Sarup while Ex.DW1/A is the certified copy of the record showing area and boundaries of plot No.1. Adjoining to this on north is plot No.1 of Mehma Ram. The sale certificate Ex.DW1/B was issued in favour of Shanti Sarup on 27.12.1985. He stated that there is no record with the Rehabilitation Department showing delivery of possession to Shanti Sarup and others and also regarding measurements affected at the spot. In site plan Ex.DW1 prepared by Ravinder Arora DW 1 has been shown plot No.1 of Deena Nath, plot No.2 earlier sold to Shanti Sarup and plots Nos.3 and 4. In site plan DW1, the site where Dina Nath has set up his Atta Chakki has not been shown. It is in evidence that apart from plot No.1, Deena Nath is in possession of the site where he has set up Atta Chakki at the spot. He is in possession of much more than plot No.1 at the spot. Site plan Ex.D1 cannot be given any credence as in it, true position of ownership and possession of Deena Nath has not been shown. Ravinder Arora did not measure the site of the plaintiff upto his Karkhana situated towards the north and he did not measure the site of the Karkhana of the plaintiff.

9. Mohinder Pal DW 3 stated that he has seen the site in dispute. It is plot No.2 allotted to Shanti Sarup Mehma Ram's plot which was allotted to him in different from this plot. It is towards the north of side of plot No.2. Mehma Ram is dead. His son is in possession of Mehma Ram's plot. In cross examination, he stated that earlier site in dispute was lying vacant. It measures 50' x 37'. On its northern side is Chakki of Mehma Ram. On the southern side is the Bara of Shanti Sarup, towards eastern side is the property of PWD and towards western side is a street. The site in dispute is lying vacant at the spot. Baljit Singh DW 4 stated that in the plot in dispute there are wheat thrashers and other

machinery of the plaintiff lying. The plot of Shanti Sarup defendant is adjoining to the plot in dispute owned by the plaintiff. The site in dispute measures 50' x 37'. On its north is the chakki of Mehma Ram. In the south is road, towards eastern side is road and towards western side is street. Shanti Sarup DW 5 stated that he purchased the site measuring 50' x 37' which is plot No.2. He has not seen the plot No.1. Towards north of plot No.1 there is no karkhana and site of the plaintiff. Towards south of the plot No.1 is street, towards east is shamlat Nala and towards west of the plot No.1 is street. He has no concern with plot No.1. He had sold site measuring 10' x 37' to Shan Chand 5/6 months after he had purchased the same. Ram Sarup DW 6 stated that the defendants have no concern with the plot No.1 owned and possessed by the plaintiff. Towards north of the plot in dispute there is Atta Chakki of the plaintiff. It is, thus clear that Mehma Ram purchased the plot No.1 from the Rehabilitation Department. Towards north of plot No.1, he was already owner and in possession of the site where there is Atta Chakki now. Deena Nath is, thus, entitled to the site of the Atta Chakki and plot No.1 towards south of the Atta Chakki. In Ex.DW1/A, towards north is plot No.1 towards south is plot No.3 and in between is plot No.2. In the same row vertically there are four plots i.e. plot Nos.1, 2, 3 and 4. Shanti Sarup might have purchased plot No.2 and Shan Chand might have purchased some portion of plot No.2 from Shanti Sarup, but he has no right to usurp the plot No.1 belonging to Mehma Ram. At the spot, Mehma Ram was entitled to plot No.1 and towards north of plot No.1 he was entitled to the site as well where now there is Atta Chakki. That the defendants now attempting to do is that they want to relegate Deena Nath plaintiff to the site of

Atta Chakki alone and want to usurp plot No.1 in the garb that it is plot No.2.”

[7]. Ultimately, the appeal was dismissed by observing that the defendants are not entitled to plot No.1. They are not entitled to relegate the plaintiff to the site of Atta Chakki and usurp plot No.1 in the garb of their purchase of plot No.2. After leaving the site of Atta Chakki, the plaintiff is entitled to plot No.1. After leaving plot No.1, if any plot remains in between the plots Nos.1 and 3, the defendants may take it. Plot No.2 might have existed in the record, but the question is whether it existed at the spot or not.

[8]. Perusal of the aforesaid judgment passed by the Lower Appellate Court would show that the lower Appellate Court has commented upon the site of Atta Chakki which was never pleaded by the plaintiff, nor any declaration was sought in respect thereof. The suit was for permanent injunction in respect of plot No.1. Lower Appellate Court has further observed that if any other plot remains in between plot Nos.1 and 3, defendants may take it. Whether plot No.2 existed at the spot or not was not commented upon by the Lower Appellate Court in the judgment dated 26.09.1989.

[9]. Regular Second Appeal filed against the judgments and decree passed by the Courts below was dismissed on 23.08.1990. Thereafter, plaintiff Dina Nath filed execution petition under Order 21 Rule 32 CPC for directing the judgment

debtors/respondents for restoring the possession of plot No.1 as shown by letters ABCD in the site plan.

[10]. The said petition was contested by the defendants/judgment debtors.

[11]. Petition was accepted by Civil Judge (Junior Division), Rajpura vide order dated 07.06.1996 and the defendants were directed to give possession of the original site as it is existed on 27.01.1983 to the plaintiff/decreed holder i.e. site AB 54 feet long, site BC 50 feet long, site CD 36 feet long and site AD 50 feet long. Defendants/judgments debtors were directed to give possession to the plaintiff before 26.07.1996, failing which the property was to be attached.

[12]. Against the said order dated 07.06.1996, defendants/petitioners filed CR No.2886 of 1996. High Court vide order dated 05.07.2010 appreciated the arguments of both the sides. The contention of the defendants/petitioners was that plot No.2 was purchased by them through Shanti Sarup from Rehabilitation Department. The entire controversy was in respect of demarcation of plot Nos.1 and 2 and the same will identify the property purchased by Mehma Ram from Rehabilitation Department in the year 1958 and the property purchased by the petitioners through Shanti Sarup in the year 1982. Report of Local Commissioner and site plan on record did not demarcate plots No.1 and 2 conclusively. The contention of the decree

holder was to the effect that site ABCD in the site plan Ex.AW 4/A attached with the suit was in respect of property purchased by the plaintiff from Rehabilitation Department in the year 1958 and the said area was relatable to the area described as MABHFCDL in the site plan prepared by the Local Commissioner. The shop of Gurmail Singh towards southern side was claimed to be plot No.3 purchased by Gurmail Singh from Rehabilitation Department. Plot No.2 was pleaded to be non-existent plot. High Court further held in the following manner:-

“With the assistance of the learned counsel for the parties, I have also examined the demarcation report Exhibit RW7/D carried out by the Revenue officials. The said demarcation report again demarcates plot No.2 but plot No.1 has not been demarcated. It is, thus, apparent that plots No.1 and 2 have not been demarcated. Therefore, the order passed by the learned Executing Court dated 07.06.1996 is set aside as it would be in the interest of justice to direct the learned Executing Court to get plot Nos.1 and 2 demarcated. The learned Executing Court would be well advised to take the assistance of the Rehabilitation Department, particularly their records in respect of plot Nos.1 and 2 to conclusively determine the rights of the parties.

The parties through their learned counsel for directed to appear before the learned Executing Court on 02.08.2010.

The revision petition stands disposed of accordingly.”

[13]. Perusal of the concluding part of the aforesaid order would show that the High Court after examining the demarcation report RW7/D carried out by the revenue department found that plot No.2 was demarcated, but plot No.1 was not demarcated. Both the plots were not demarcated. The order dated 07.06.1996 was set aside. Executing Court was directed to get plot Nos.1 and 2 demarcated. Executing Court was also advised to take assistance of the Rehabilitation Department in terms of records in respect of plot Nos.1 and 2 to conclusively determine the rights of the parties. Order dated 05.07.2010 passed by the High Court in CR No.2886 of 1996 was never assailed by the plaintiff/decreed holder and the same has attained finality.

[14]. In pursuance of aforesaid order, Naib Tehsildar, Banur conducted a demarcation and submitted his report dated 15.03.2013. He has also prepared a site plan showing that demarcation was done. Plot No.4 was demarcated as 'AFGB'. Arms AB and FG were found to be of 50 feet each and arms AF and BG were found to be of 36 feet each. This plot was shown in pink colour as per Annexure P8 on record. Plot No.3 shown in yellow colour was demarcated as 'BGHC'. Arms BG and GH were shown to be of 50 feet each and arms BG and CH were shown to be of 36 feet each. Similarly, plot No.2 shown in green colour demarcated as 'CHID' was found with arms CD and HI to be of 50 feet each and arms CH and DI to be of 36 feet each.

Thereafter, plot No.1 was earmarked as 'DIJE' with arms DE and

IJ to be of 52 feet each and arms DI and EJ to be of 36 feet each. Local Commissioner found that at the site, the boundary wall and shops constructed in plot No.2 were in dilapidated condition and the plot was found to be situated between plot Nos.1 and 3.

[15]. Local Commissioner further observed in the aforesaid report that the demarcation was done according to map obtained from the office of Kanungo, Mohali under the order of District Revenue Officer, Patiala. Other than this, there are no details in the revenue record.

[16]. Perusal of the aforesaid report would show that one of the legal representative of plaintiff Dina Nath has claimed area to the south of plot No.1 between point D and I i.e northern arm of plot No.2 as per demarcation to be his ancestral land. In a way, aforesaid objector claimed southern side of plot No.1 to be his ancestral land.

[17]. One of legal representative of Dina Nath plaintiff i.e. Tarsem Chand son of Amar Nath raised objections against the demarcation. He produced documents viz. site plan, decision dated 26.09.1989, demarcation report dated 11.03.1983 prepared by Kanungo, assessment register dated 24.04.2008 prepared by Municipal Council, Banur and application dated 07.02.1983 filed by residents of Banur. According to the objector Tarsem Chand, area to the south of plot No.1 between point D and I belonged to him and he claimed this area to be his ancestral land. He claimed

area under plot No.2 to be of his own area and further claimed that plot No.2 did not exist at the spot.

[18]. Report dated 15.03.2013 was submitted by the Local Commissioner/Naib Tehsildar, Banur along with site plan. Thereafter, objections were filed to the aforesaid report of Local Commissioner by the plaintiff through his LRs on 10.05.2013. Reply to the objections was filed by the defendants/petitioners on 03.08.2013.

[19]. Objections were dismissed by the Civil Judge (Junior Division), Rajpura vide order dated 13.02.2014. Concluding part of the order is to the following effect:-

“7. After perusing the entire file meticulously and hearing the respective submissions of the learned counsel for the parties, it reveals that after demarcation by the Local Commissioner, the objectors/LRs of Deena Nath have only grievance that the plot No.1 and the site of Atta Chakki are distinct and separate and both are liable to be established which are not mentioned in the report of Local Commissioner. It is further submitted in the objections that in the earlier decisions upto Hon’ble High Court, it was held that there is a site of Atta Chakki belonging to the plaintiff/petitioners Dina Nath and others towards North of the plot No.1. Perusal of the order dated 05.07.2010 passed by the Hon’ble High Court shows that the order passed by the Executing Court dated 07.06.1996 was set aside with the direction to Executing Court to get plot No.1 and 2 demarcated and further advised to take the assistance of the Rehabilitation Department, particularly, their records in

respect of plot Nos.1 and 2 to conclusively determine the right of the parties and accordingly the Local Commissioner was appointed who vide its report dated 15.03.2013 reported that as per existing position at the spot there is plot No.1 and there is no plot No.2. As such, without going into further detail, this Court has no power to go beyond the directions issued by the Hon'ble High Court vide order dated 05.07.2010 which have already been complied with. Hence, the objection taken by the objector/decreed holders are without any merits and liable to be dismissed. I order accordingly."

[20]. Perusal of the aforesaid order would show that trial Court while dismissing the objections has recorded a finding that as per report dated 15.03.2013 submitted by the Local Commissioner, plot No.1 was found to be in existence and plot No.2 was not found in existence. For ready reference, operative part of the report of the Local Commissioner dated 15.03.2013 can be reproduced hereasunder:-

*"-----After this plot No.2 was measured, 50 feet towards north was marked point D and finally plot No.1 was similarly marked 52 feet towards north which was taken as point E.---
-----"*

"-----At the site the boundary wall and shops constructed in plot No.2 was found to be in dilapidated condition. This plot is situated between plot No.1 and plot No.3.-----"

"-----As per Sh. Tarsem Chand, the area to the south of plot No.1 between point D and I belongs to him, which is his ancestral land. In fact, as per him, the area which is marked

as plot No.2 as per the present marking from point C to D equal to 50 feet: point D to I equal to 36 feet and point H to C equal to 36 feet thus, admeasuring 200 sq. yards, plot No.1 and plot No.2 at the spot does not exist.-----”

[21]. In the aforesaid reproduction existence of plot No.2 was found by the Local Commissioner, whereas in the objections filed by Tarsem Chand, it was claimed to be not in existence. The demarcation was done with the help of map obtained from the office of Kanungo Mohali under the order of District Revenue Officer, Patiala. Except the aforesaid document, there were no details in the revenue record.

[22]. Learned counsel for the petitioners vehemently submitted that once the objections filed by the plaintiff were dismissed, the issuance of warrant of possession vide order dated 18.02.2014 was totally illegal. When the Local Commissioner had found existence of plot No.2, then the objections were filed by the plaintiff. One of the legal representative of the plaintiff raised objections at the site and thereafter, formal objections were filed before Civil Judge (Junior Division), Rajpura. Though the objections were dismissed vide order dated 13.02.2014, but Civil Judge (Junior Division), Rajpura has wrongly observed that plot No.2 was not in existence. The aforesaid observation was totally against the report of Local Commissioner who has found existence of plot No.2 with

reference to site plan and map obtained from the office of Kanungo Mohali.

[23]. Learned counsel further submitted that due to the aforesaid omission recorded by Civil Judge (Junior Division), Rajpura in the order dated 13.02.2014, the petitioners filed an application under Section 152 CPC on 03.03.2014. Before deciding the said application, Tarsem Chand suffered a statement before Civil Judge (Junior Division), Rajpura on 21.03.2014 that the decree holder has taken possession of the suit property and as such, the application be dismissed as withdrawn. In view of statement suffered by the applicant, the application was allowed to be withdrawn and file was consigned to record room vide order dated 21.03.2014. Since the application filed by the petitioners remained undecided, another application was filed on 24.03.2014 by the petitioners for decision of the application for rectification of order dated 13.02.2014 passed by Civil Judge (Junior Division), Rajpura. The application was rejected by the Civil Judge (Junior Division), Rajpura vide the impugned order with the observation that only plot No.1 was found in existence and plot No.2 was not found to be in existence. Order dated 13.02.2014 was rightly passed by Court after going through the report of Naib Tehsildar. The application was dismissed on the additional ground that Court has no right to review its own order.

[24]. On the other hand, learned counsel for the respondents vehemently submitted that existence of plot No.2 was not found during main proceedings of the suit which have culminated upto regular second appeal.

[25]. Perusal of the record would show that Additional District Judge while dismissing the appeal of the petitioners has observed that if any plot remains in between plot No.1 and 3, defendants may take it. One of the legal heir of the plaintiff namely Tarsem Chand also filed objections at the spot when demarcation by the Naib Tehsildar was in offing. According to his objections, area towards south of plot No.1 between point D and I belonged to him as his ancestral land. Existence of plot No.2 was negated and after plot No.1 towards southern side, the area was claimed to be ancestral property of Tarsem Chand. Local Commissioner has obtained the map from the office of Kanungo Mohali under the order of District Revenue Officer, Patiala. Other than this document, no details are available in the revenue record. After consulting the aforesaid map, the Local Commissioner found the existence of plot No.2 as per demarcation report dated 15.03.2013. Local Commissioner also found that the boundary wall and shops constructed in plot No.2 were in dilapidated condition. The plot was found to be situated between plot Nos.1 and 3. Objections filed by the plaintiff(s)/decree holder(s) were dismissed by Civil Judge (Junior

Division), Rajpura vide order dated 13.02.2014, but by misreading the report, wherein existence of plot No.2 was shown.

[26]. Perusal of order dated 13.02.2014 would show that the trial Court has rejected the objections of the plaintiffs/respondents by observing in the following manner:-

“Perusal of the order dated 05.07.2010 passed by the Hon’ble High Court shows that the order passed by the Executing Court dated 07.06.1996 was set aside with the direction to Executing Court to get plot No.1 and 2 demarcated and further advised to take the assistance of the Rehabilitation Department, particularly, their records. In respect of plot Nos.1 and 2 to conclusively determine the rights of the parties and accordingly the Local Commissioner was appointed who vide its report dated 15.03.2013 reported that as per existing position at the spot there is plot No.1 and there is no plot No.2.”

[27]. The aforesaid observations of Civil Judge (Junior Division), Rajpura run contrary to the report itself and thereafter, the Court proceeded to issue warrant of possession of the land in dispute and ultimately, recorded the statement of Tarsem Chand that the decree holder has taken the possession of the suit property and application/execution be dismissed as withdrawn. Execution was accordingly dismissed as withdrawn vide order dated 21.03.2014 and application filed by the petitioners for correction/modification of order dated 13.02.2014 was ultimately dismissed vide order dated 15.01.2015 and thereafter, legal representatives of plaintiff Dina Nath have sold the land in

question to respondent No.4 on the basis of agreement to sell dated 29.09.2014.

[28]. I have considered the submissions made by learned counsel for the parties.

[29]. The present controversy arising out of execution hinges upon the order dated 13.02.2014 which was passed on the basis of report of Local Commissioner dated 15.03.2013 holding that plot No.2 is not in existence. In fact, report of Local Commissioner was to the contrary. The subsequent orders dated 18.02.2014, 21.03.2014 and 15.01.2015 are the off shoots of the order dated 13.02.2014. Petitioners have lost the main litigation upto High Court, wherein existence of plot No.2 was found to be doubtful. Lower Appellate Court while deciding the appeal has observed that if any plot remains in between plot Nos.1 and 3, defendants may take it. Plot No.2 might have existed in the record, but the question is whether it existed at the spot or not.

[30]. Keeping in view the factual existence of plot No.2 at the spot or not, High Court vide order dated 05.07.2010 accepted CR No.2886 of 1996 by setting aside the order dated 07.06.1996 passed by the Executing Court and directed the Executing Court to get plot Nos.1 and 2 demarcated by taking assistance from Rehabilitation Department, particularly their records in respect of plot Nos.1 and 2 to conclusively determine the rights of the parties. Thereafter, Local Commissioner was appointed who has

submitted his report dated 15.03.2013, endorsing the existence of plot No.2. Objections filed by the LRs of the plaintiff would show that they were aggrieved by the report of the Local Commissioner in respect of existence of plot No.2. On the one hand, objections were rejected by the Executing Court, but at the same time while rejecting the objections, the Executing Court has observed in its order dated 13.02.2014 that plot No.2 is not in existence. The aforesaid observation has come on record while considering the report dated 15.03.0213 submitted by the Local Commissioner. Perusal of the record shows different reading of the same.

[31]. At this stage, it would be just and appropriate to direct Civil Judge (Junior Division), Rajpura to re-visit the order dated 13.02.2014 on the basis of report dated 15.03.2013 submitted by the Local Commissioner and thereafter, pass appropriate order in accordance with law. Petitioners would be at liberty to avail their remedies against the consequent proceedings in accordance with law.

[32]. Disposed of.

(RAJ MOHAN SINGH)
JUDGE

26.09.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No