

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

CR No.4394 of 2017 (O&M)
Date of decision : 05.04.2018

Zile Singh (deceased) through his LRs

...Petitioners

Versus

Smt. Lichmi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Mor, Advocate for the petitioners.

Mr. Manoj Sharma, Advocate for respondent No.1.

Mr. Karan Singh, Advocate for respondent Nos.2, 4 and 5.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff through his LRs are in the revision petition against the order passed by the learned First Appellate Court dismissing the application for getting the land in dispute demarcated.

The plaintiff filed a suit for possession claiming illegal encroachment by the defendants. The plaintiff before filing of the suit had got the land demarcated through Ram Kumar, Field Kanungo. During the trial of the case, Ram Kumar, Field Kanungo was examined as PW2, however, he in his evidence stated that the demarcation was not conducted with the help of the scale. On this ground, the learned trial Court rejected the demarcation while dismissing the suit. The defendants also during the pendency of the trial of the suit filed an application for getting the land

demarcated. The aforesaid application was also dismissed.

Before the First Appellate Court, the appellants filed an application for getting the land demarcated from a revenue official. The aforesaid application has been dismissed by the Court vide order dated 09.05.2017 recording that if the application is allowed, it will prejudice the interest of the respondents.

This Court has heard the arguments of the learned counsel for the parties at length and with their able assistance gone through the paper book.

It is not disputed that the learned trial Court had dismissed the suit filed by the plaintiffs and one of the reason assigned was that the demarcation on the basis whereof the suit was instituted is not conducted in a proper manner. Once the Court was not satisfied with the demarcation carried out and this is the main dispute which required determination, learned First Appellate Court committed a serious irregularity and illegality in dismissing the application. There is no question of any prejudice being caused to the respondents if the demarcation is carried out.

Learned counsel for the respondents has drawn the attention of the Court to two judgments passed by this Court to contend that in such case the revision petition is not maintainable.

In the considered opinion of this Court, there cannot be any absolute bar to the maintainability of the revision petition. The facts of each case have to be examined and then decided. In the present case, the suit for possession was filed on the basis of the demarcation report. The demarcation report was rejected by the Court on the ground that such

demarcation was not conducted in accordance with law. In these circumstances, the petitioner moved an application before the First Appellate Court.

The judgments referred to by the learned counsel for the respondents are distinguishable. Both the decisions are interpreting the provisions of Section 115 of the Code of Civil Procedure. The present revision petition has been filed under Article 227 of the Constitution of India. High Court in its jurisdiction under Article 227 of the Constitution of India has a wide Superintending power to correct the orders passed by the Court. This Court has taken this view in the peculiar facts of the case. Of course, normally, the revision petition is not maintainable.

In view of the above, the present revision petition is allowed.

05.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No