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

**Civil Revision No.473 of 2017
Date of Decision: 22.11.2018**

RAGHUBIR SINGH

.....Petitioner

Vs

BACHAN SINGH AND ORS

....Respondents

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

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Shikar Sarin, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 23.11.2016 passed by the Civil Judge (Sr. Divn.) Faridabad accepting third time objections of the decree holder to the report of Local Commissioner that they were already in possession of the area as claimed in the execution petition.

[2]. Brief facts are that the respondents/plaintiffs filed a suit for possession of plot to the effect that the plaintiffs were exclusive owner of plot bearing Rect. No.25 Killa No.1/2/10(0-9) situated in the revenue estate of village Bukharpur, Tehsil Ballabgarh, District Faridabad. Plaintiffs were in possession of

the same and had constructed a pucca house on some portion. Rest of the portion towards western side of the house of the plaintiffs was lying vacant. The house of the defendant was built over Killa No.1/2/8 (0-6), 1/2/11(0-3) towards western side of plot of the plaintiffs. Plaintiffs further alleged that the defendants had taken illegal possession of some vacant portion of the plot of the plaintiffs without any right title or interest in the property and also erected wall over it.

[3]. Both the parties went to trial on specific issues.

[4]. The trial Court vide judgment and decree dated 17.03.2005 decreed the suit of the plaintiffs. Defendant was directed to hand over the vacant possession of the land measuring 4' towards South of the plot comprised in Rect. No.25 Killa No.1/2/10 (0-9) to the plaintiffs. The counter claim set up by the defendant was dismissed. The facts were elaborated in para No.12 of the judgment passed by the trial Court. For ready reference the said para is reproduced hereasunder:-

“12. As already discussed, it is not disputed that plaintiff are owners in possession of 9 marlas of land comprised in rect. No.25 Killa No.1/2/10. Copy of aks sijra placed on record as Ex.P5 shows that plot in question measures 12 Karam towards North, 8 Karam towards East, 5 plus 3 karam towards South and 9 karam towards west.

The rasta measuring 3 karam adjoining the said plot comprised in Killa No.1/2/10 is also shown. This rasta is 3 karam adjoining the suit and 2 karam subsequently. According to the allegations leveled by the plaintiffs as well as report of Local Commission Ex.P2, Ex.P3, an encroachment measuring 4 i.e. 7 Sq. Yards had been made by Raghubir Singh over the land belonging to the plaintiffs. The plaintiffs have claimed that due to encroachment, the rasta-in-question had become small and an obstruction was being caused in the smooth passage of the plaintiffs. There are three reports of demarcation in the case file. There are three report of demarcation in the case file According to two reports, the defendant has encroached upon 4' land belonging to the plaintiffs, whereas according to one report, no encroachment has been made by the defendant, as alleged. The defendant had got the land-in-question demarcated by retired Tehsildar Sukhbir Singh, whereas the plaintiffs had got the demarcation done through the office of Assistant Collector Second Grade, Ballabgarh and the demarcation was done by the Field Kanungo and Tehsildar himself visited the spot and verified the report as is clear from the statement of PW1. Furthermore, this court had appointed a Local Commission and the land-in-question was again demarcated in the year 2000 by Dharambir Singh, Halka Girdawar, Ballabgarh. There is no allegation that the said official were approached by the plaintiff or that they submitted the reports on receiving some illegal gratification. Furthermore,

these reports are in accordance with instructions given by the Financial Commissioner and no illegality has been pointed out regarding the mode of demarcation by the concerned official. There is absolutely no reason to believe two officers of revenue department, who had demarcated the land-in-question during different period. It cannot be lost sight that report of Field Kanungo was duly verified by Pushpender Singh Chauhan, Tehsildar himself and thereafter, the orders were passed for removal of encroachment by the defendant. The report of Sukhbir Singh, Naib Tehsildar does not inspire much confidence as he has stated in his report that demarcation was done by him in the presence of both the parties, whereas only the signatures of Raghubir Singh are only appended under the said report and the same is not signed by the plaintiff or his representatives. Apparently, Naib Tehsildar has tried to mis-lead by making a false statement in the report. This witness has not mentioned in his report that Ganga Saran, if present, had refused to sign or affix his thumb impressions as token of his presence. Even otherwise, two reports of revenue officials contradicts the report given by Sukhbir Singh, retired Naib Tehsildar, which is Ex.DW2/B on record. The plot-in-question should be 8 karam towards South but as per report of Local Commission sent by his court, the plot is 4' only towards South and the remaining area is encroached by Raghubir Singh by raising a wall. The plaintiffs are definitely entitled to get the possession of 4' of land which rightfully belongs to

them. Resultantly, both these issues are decided in favour of the plaintiffs.”

[5]. The judgment and decree passed by the trial Court was upheld by the lower Appellate Court and further RSA No.2789 of 2006 filed by the petitioners/defendant was dismissed on 19.08.2009. The findings recorded by the Courts below were affirmed.

[6]. It is relevant to mention here that while decreeing the suit of the plaintiffs, a finding of fact was recorded by the trial Court that during trial proceedings different demarcation reports were taken into consideration. Two demarcation reports were found to be in favour of the plaintiffs and one demarcation allegedly conducted by one retired Tehsildar namely Sukhbir Singh was in favour of the defendant. Demarcation reports in favour of the plaintiffs were found to be elaborative and demarcation conducted in favour of the defendant was found to be suffering from inherent shortcomings. The findings recorded on the basis of different demarcation reports by the trial Court were affirmed by the Courts in hierarchy upto the High Court.

[7]. In execution proceedings, it appears that the executing Court has also relied upon some demarcation conducted during pendency of the execution. It is not understandable as to how and under what recognized mode of procedure, the executing

Court has devised to ask for any demarcation particularly, when number of demarcation reports were relied during main proceedings before the trial Court and same were upheld in hierarchy upto the High Court. The decree has to be executed by the executing Court without any addition or subtraction.

[8]. At the time of issuance of notice of motion, learned counsel for the petitioner made statement without going into the merits of the case that the petitioner wishes to compensate the respondents with regard to 7 sq. feet of the land subject matter of decree for possession. Notice of motion was issued and demolition of the suit property was stayed.

[9]. In pursuance of the aforesaid order, plaintiffs/respondents have appeared through their counsel.

[10]. Learned counsel for the respondents made a categorical statement on instruction from Bachan Singh that the plaintiffs/decreed holders are not amenable to any such rapprochement having contested the litigation for number of years to the hilt. By way of any understanding the path will be narrowed down and the same would be of no utility for them.

[11]. In view of stand taken by the respondents, the scope of order dated 13.02.2017 cannot be enlarged to compel the plaintiffs/decreed-holders to accept the submission made by learned counsel for the petitioner. The executing Court cannot

go beyond the decree passed by the trial Court which has been upheld by the Courts in hierarchy upto the High Court.

[12]. In view of above, no interference is called for in this present revision petition. The same is accordingly dismissed.

November 22, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No