

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

CR No. 5065 of 2018(O&M)

Date of decision : 18.12.2018

Jaswant Singh

..... Petitioner

versus

Gurneet Kaur and others

..... Respondents

: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Abhilaksh Grover, Advocate for the petitioner.

Mr.Sunil Chadha, Sr.Advocate with
Mr.Chetan Bansal, Advocate
for respondent No.1.

Ms.Akshita Chauhan, AAG, Punjab
for respondents No.6 and 7.

AMOL RATTAN SINGH, J. (ORAL)

By this petition the petitioner challenges the order/reports dated 31.05.2018, 28.09.2016 and 17.08.2016 (Annexures P-13, P-10 and P-7 respectively).

Annexure P-7 is an order passed by the learned Civil Judge (Junior Division), Rajpura, on 13.07.2016, disposing of an application filed by respondent no.1 herein (also a defendant before the trial Court) seeking appointment of a revenue official as a local commissioner. A reply having been filed by the present petitioner to that application, the trial Court found that appointment of a local commissioner was necessary to determine the correctness of the contention raised by the applicant (respondent no.1 herein), to the effect that some trees in her land had been cut for her personal use, but with the plaintiff (present petitioner) claiming that the trees were standing on his land.

Consequently, to determine the factual position on the spot, the Halqa Kanungo, Ghannaur, was appointed as a local commissioner to visit the spot ad to determine as to from whose land the trees had been cut.

Annexure P-10 is another order passed by that Court on 28.09.2016, noticing that the present petitioner had filed his objections to the report of the local commissioner, which were kept open for consideration at the time of final arguments in the suit.

Annexure P-13 is an order dated 31.05.2018 passed by that Court on an application filed by the petitioner-plaintiff seeking the appointment of another local commissioner, with that application having been dismissed on the ground that, firstly, there was a compromise entered into between the parties on 01.18.2015 that they would get the land in dispute demarcated and thereafter the trees standing on the land would be cut by the party in whose land the trees were standing. It was further noticed that the land had actually been got demarcated by both, the applicant and the non-applicant, pursuant to the aforesaid compromise reached, with the report of the local commissioner dated 17.08.2016 (Annexure P-7) showing that the trees were falling in *Khasra* no. 61 which, as per revenue record, belongs to respondent no. 1 herein.

Hence, observing that demarcation already having been conducted twice at the behest of the parties, the re-demarcation was being sought again and again only till such time as a favourable report was received, further observing that the objections filed by the present petitioner were also on record, it was held by that Court, with regard to that application of the petitioner, that the parties be allowed to lead their own evidence instead of the court 'creating evidence' for them.

At the initial stage in this petition, since a passage was stated to be involved, this Court in order to determine whether it was a public passage either belonging to the State or the Gram Panchayat concerned, had directed the SDM-cum-SDO(Civil), Rajpura, to have a demarcation conducted to determine as to whether or not any public land was being encroached upon vide an order passed on 08.08.2018; after which, upon an application having been filed by the respondent no.1 herein, that order had been modified on 11.09.2018, simply directing the SDM, Rajpura, to first determine as to whether any public land belonging to either the State or the Gram Panchayat had been encroached upon.

The SDM-cum-SDO(Civil) filed his affidavit in reply thereto, dated 04.10.2018, in which a categorical finding has been given(after the SDM visited the spot along with revenue officials and the parties), that the passage in question was comprised in khasra Nos. 595/34(0-6), 597/35(0-4), 599/36(0-4), 601/39(0-4), 603/40(0-4), 605/43(0-4), 607/44(0-4), 609/51(0-4), 611/52(04) situate in the revenue estate of village Dharamgarh Dakhli Lohsimbli, Sub-Tehsil Ghanaur, Tehsil Rajpura, Distt.Patiala, with the said Khasra Numbers being in the ownership of the petitioner, i.e. Jaswant Singh, and as such, neither the Gram Panchayt nor the State had any concern with the said passage.

That being so, with no public land shown to be encroached upon, naturally it is now up to the parties to lead evidence before the trial Court to prove ownership and possession etc. of the suit land.

Mr. Grover, learned counsel for the petitioner, first however, points to para 5 of Part B of Chapter 10 of Volume I of the High Court Rules and Orders which reads as follows:-

“5. Court Readers or other Ministerial Officers should never be appointed to make local investigations, such as finding out the market value of the property, etc. Such Commissions should be issued wherever possible to retired Revenue Officers or professional men, such as engineers, contractors, auctioneers and accountants. Legal Practitioners are not excluded from appointment as local investigation commissioners but the best man for the particular commission in should appointed.

Revenue Officers in service such as Tehsildar and Naib Tehsildars should not, as a rule, be appointed when retired officers suitable for the work are available. The wishes of the parties in regard to the appointment of a particular individual as Commissioner for local investigations should be taken into consideration while making such appointments.”

Thus, he submits that a local commissioner appointed by the trial Court being a Kanungo, his report should not be accepted and therefore, a neutral person should be appointed to demarcate the land.

In the alternate he submits that at least that part of the impugned order (Annexure P-10) should be set aside, by which the trial Court has refused immediately to adjudicate upon the objections filed by the petitioner to the local commissioner's report.

Mr. Chadha, learned senior counsel appearing for the respondents, submits that as regards the alternate prayer the respondents have absolutely no objections thereto, as also stated by them in the application seeking vacation of the interim order passed by this Court; but as regards appointment of another local commissioner, they have serious objections thereto, in view of what has already been stated in the impugned order, Annexure P-13, by the learned trial Court, to the effect that the demarcation prior to the suit having been filed, was on a compromise

reached between the parties themselves (a copy of the compromise deed

being Annexure P-3 on record), and therefore, that report, as also the report of the local commissioner appointed by the trial Court having already come as it is, appointment of still another commissioner would be highly unfair.

Having considered the matter, as regards the contention of the petitioner seeking appointment of another local commissioner at this stage, that is rejected for the reasons given in the impugned orders as also reiterated by learned senior counsel appearing for the respondents, with, however, the contention of Mr. Grover, learned counsel for the petitioner, to the effect that the objections filed by the petitioner to the report of the local commissioner, be heard prior to the evidence being led.

Consequently, this petition is partly allowed with the order Annexure P-10 set aside to the extent that the trial Court has observed therein that the objections would be heard at the time of arguments, with that Court instead now directed to hear the objections filed by the petitioner (to the report of the local commissioner, dated 17.08.2016), immediately forthwith, prior to evidence being adduced by either side.

If, after hearing the objections, that Court comes to the conclusion that the objections are well founded and another demarcation actually needs to be conducted, that shall be got done (if it is needed), by directing the demarcation to be conducted in the presence of the parties as also in the presence of an Advocate as a local commissioner.

However, it is made absolutely clear that this observation of this Court shall not be taken by the trial Court to be any opinion of this Court on whether or not the demarcations already on record before that court are correct or incorrect, and that issue would be decided by that court wholly on its own merits after the petitioner's objections to the demarcation

report aforesaid are heard.

As regards the affidavit of the SDM filed before this Court, it is to be again observed that the said affidavit had been called upon even in a *lis* between two private parties only in view of the fact that a passage was stated to be involved, which this Court needed to determine was a public passage or not. Consequently, the affidavit filed by the SDM, as regards *khasra* numbers etc., shall be ignored by the trial Court, except of course if it is duly corroborated by revenue record produced in evidence. The decision in the suit, as also on the objections raised by the petitioner, will be wholly on the basis of such objections filed before that court, as also the evidence led before it.

(AMOL RATTAN SINGH)
JUDGE

18.12.2018
sunita/nitin

Whether speaking/reasoned	Yes
Whether Reportable	Yes