

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7247 of 2018(O&M)
Date of Decision-11.12.2018

Barinder Singh and another ... Petitioners
Versus

Avtar Singh and another ... Respondents

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

Present: Mr. K.S. Dadwal, Advocate
for the petitioners.

Mr. Bhupinder Banga, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioners against the order dated 20.09.2018 passed by Additional Civil Judge (Senior Division), Garshankar, District Hoshiarpur, vide which the trial Court took cognizance of the order dated 24.04.2014 at the stage of rebuttal and arguments and order dated 10.10.2018 passed by the Additional Civil Judge (Senior Division), Garshankar, District Hoshiarpur, vide which the application filed for recalling of the order dated 20.09.2018 was also dismissed.

[2]. Perusal of the record would show that the plaintiffs/petitioners filed a suit for permanent injunction, restraining the defendants from demolishing and creating any obstruction in the use of suit property as shown in the site plan.

Plaintiffs also sought restraint qua dispossession of the plaintiffs

from their peaceful possession and from changing the nature of the land. The suit was filed on 13.06.2013 to which written statement was filed by the defendants on 21.01.2014. Before filing the written statement, an application was filed on 05.08.2013 for appointment of Local Commissioner by the defendants. The prayer was allowed vide order dated 24.04.2014 and issues were also framed on the same day. The order appointing Local Commissioner was never implemented nor the defendants had pressed for the same at the relevant stage. In the meanwhile, plaintiffs/petitioners concluded their evidence and closed the same on 07.03.2018. Defendants also closed their evidence on 19.05.2018.

[3]. Thereafter, defendants even filed an application for leading additional evidence on 18.07.2018 which was allowed by the trial Court vide order dated 24.08.2018 on the basis of no objections raised by the plaintiffs/petitioners against placing on record the sale deed by means of additional evidence. Plaintiffs did not rebut the factum of additional evidence led by the parties. Thereafter, the case was fixed for rebuttal evidence (if any) and for arguments.

[4]. Trial Court vide order dated 20.09.2018 recorded that no rebuttal evidence was present and on the joint statement of the parties, the Local Commissioner which was appointed on 24.04.2014 was taken into consideration. Since the Local

Commissioner did not visit the spot and did not file his report, nor any notice was issued to the Local Commissioner to submit his report, therefore, notice was issued to Surinder Pal, Advocate to visit the spot and submit his report.

[5]. Against the order dated 20.09.2018 passed by Additional Civil Judge (Senior Division), Garshankar, plaintiffs/petitioners filed an application for recalling of order dated 20.09.2018 on the premise that after conclusion of evidence by both the sides, the case was fixed for arguments. Even arguments were addressed by respective learned counsel for the parties. Necessary pleadings made in para Nos.2 and 3 of the application are to the following effect:-

“2. That in the case the plaintiff after leading their entire evidence closed their evidence and the defendants were to lead their evidence inspite of many opportunities the defendants did not lead any evidence and their evidence was ultimately closed by them on 19.05.2018 and the case was fixed for arguments. The arguments were addressed by the respective counsel for the parties.

3. That the case was thereafter adjourned. However, the order could not be announced for some dates. The Hon’ble Court suo moto called the report regarding the existence position of the spot from the Local Commissioner. The Local Commissioner was appointed by Hon’ble Court at the time of deciding the stay application on 20.09.2014 and fee of the Local Commissioner was assessed by the Court which was to be paid by the defendants. But the defendants did not pay the fee of the Local Commissioner at that time and

no docket issued with a Local Commissioner and after that both the parties conclude the evidence.”

[6]. In reply to the aforesaid paras of the application for recalling of order dated 20.09.2018, defendants filed the following reply:-

“2. Para No.2 of the application is correct.

3. In reply to para No.3 of the application, it is submitted that the Local Commissioner was appointed by this Court on 24.04.2014 and the stay application was also decided on the said date. The case was fixed for evidence of the plaintiff for 28.08.2014, but in the meanwhile, the plaintiff filed appeal before the learned District Judge, Hoshiarpur against the order passed on the application under Order 39 Rules 1 and 2/Section 151 of the CPC and due to the filing of the said appeal, file of the case was requisitioned by the Appellate Court, due to which fee of the Local Commissioner was not paid to him and this case was fixed for evidence of the plaintiff.”

[7]. Perusal of the aforesaid reply by the defendants would show that contents of para No.2 have been admitted. The admission is qua the stage where after concluding evidence of the parties, the case was fixed for evidence and even arguments were addressed by learned counsel for the parties. The aforesaid facts have been admitted by the defendants in para No.2 of the reply. In reply to para No.3, it has been contended by the defendants that the Local Commissioner was appointed on 24.04.2014 and due to intervening stages of the case, fee of the Local Commissioner could not be paid by the defendants.

[8]. The application was rejected by the trial Court vide the impugned order dated 10.10.2018 and the case was adjourned to 29.10.2018 for awaiting report of the Local Commissioner.

[9]. Local Commissioner was alleged to have issued notice to the parties vide letter dated 23.10.2018 for the date of his visit on 27.10.2018. Copy of registered AD placed on record by learned counsel for the plaintiffs/petitioners would show that though the letter was issued on 23.10.2018, but the same was dispatched on 25.10.2018 on the address of petitioner No.1 and the same was received on 05.11.2018 as per seal of the post office appearing on the post card. Local Commissioner is alleged to have inspected the spot on 27.10.2018 and has given his report on 29.10.2018. Plaintiffs/petitioners filed objections to the aforesaid report of Local Commissioner by alleging that the Local Commissioner has submitted a total imaginary report without visiting the spot. The prayer was made to set aside the report of the Local Commissioner.

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

[11]. Attendance sheet prepared by the Local Commissioner did not show presence of the plaintiffs/petitioners. There was no occasion for the plaintiffs/petitioners to have any information regarding visit of the Local Commissioner as the notice was only served upon them on 05.11.2018. The material

on record would show that after concluding evidence of both the parties including additional evidence filed by the defendants, the case was listed for arguments and in fact, the same was argued by learned counsel for both the parties and it was admitted by the defendants in reply to the application for recalling of order dated 20.09.2018, therefore, there was no occasion for the trial Court to implement the order dated 24.04.2014 after a period of more than 4 years for directing the Local Commissioner to submit his report. The aforesaid exercise in my considered opinion would amount to collect evidence for a party that too at the stage when both the parties had already concluded their evidence and matter was even argued in parts before the trial Court. The nature of evidence which has been allowed by the trial Court in the form of report of Local Commissioner was even not admissible in evidence on the principles of natural justice. Local Commissioner allegedly issued letter dated 23.10.2018 to the plaintiffs/petitioners for his visit to the spot on 27.10.2018, but said letter was dispatched only on 25.10.2018 and was received by the plaintiffs/petitioners only on 05.11.2018 i.e. after alleged visit of the Local Commissioner on 27.10.2018.

[12]. In view of pertinent facts on record, there was no necessity for the trial Court to ask the Local Commissioner to visit the spot and to give his report when both the parties had already concluded their evidence and even argued the case in parts.

Plaintiffs/petitioners have explained their position when joint

statement was allegedly recorded on 20.09.2018 by the trial Court and the Court *suo moto* took cognizance of the order dated 24.04.2014 after a period of more than 4 years. There was no necessity to direct the Local Commissioner to visit the spot and submit his report at such a stage when only arguments to be heard by the trial Court and decision was to be pronounced on the basis of evidence led by the parties.

[13]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned orders dated 20.09.2018 and 10.10.2018 passed by Additional Civil Judge (Senior Division), Garshankar, District Hoshiarpur are hereby set aside. Trial Court is directed to proceed with the case in accordance with law and hear the arguments and decide the case without taking into consideration the report of Local Commissioner dated 29.10.2018.

(RAJ MOHAN SINGH)
JUDGE

11.12.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No