

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

**CR No.7728 of 2015 (O & M)
Date of Decision:-5.2.2018**

Gulab and another

...Petitioners

Versus

Ganga Ram and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sudhir Aggarwal, Advocate
for the petitioners.

Mr. Sanjay Verma, Advocate
for respondents No.1 and 2.

AMIT RAWAL J.(Oral)

The petitioners-judgment debtors are in revision petition against the order dated 8.10.2015 (Annexure P-5) whereby in an Execution Petition, application dated 7.8.2014 (Annexure P-3) for appointment of Local Commissioner has been allowed by the trial Court.

Mr. Sudhir Aggarwal, Advocate learned counsel appearing on behalf of petitioners submitted that the suit seeking permanent injunction qua forcible interference and dispossession with consequential relief of mandatory injunction for removal of the encroachment was filed by the respondents-plaintiffs but the same was partly decreed vide judgment and decree dated 25.2.2010. In this regard he has drawn the attention of this

Court to relief part of the judgment, which reads as under :-

“As a sequel to my findings arrived at on various issues above, the present suit succeeds, however, the same is partly decreed with costs and the defendants are restrained permanently from making any sort of construction over the disputed land and from interfering in the peaceful possession of the plaintiffs over the same or from dispossessing them from over there forcibly or illegally and the relief of mandatory injunction as prayed for by the plaintiffs stand declined to them. Decree-sheet prepared. File after due compliance be consigned to record room.”

to submit that decree qua interference was ordered in favour of respondents-plaintiffs but not qua mandatory injunction. Same was upheld by the lower Appellate Court. RSA No.1815 of 2012 was also filed in this Court, however, during the pendency of the execution petition vide impugned order dated 8.10.2015 the aforementioned application for appointment of Local Commissioner by taking into consideration the averments in the execution application qua alleged interference or encroachment by the petitioner, without specifying the date, year, month and time has been allowed. The said order is not sustainable in the eyes of law as the RSA aforementioned was dismissed on 06.10.2016. Even otherwise the Local Commissioner cannot be appointed for collection of the evidence, as it was incumbent upon the Decree Holder, to place on record certain documents to show the alleged dispossession. No such documents like FIR or DDR has been placed on record, muchless any complaint with the Revenue Authorities.

Per contra Mr.Sanjay Verma, Advocate learned counsel appearing for the respondents/ decree holder submitted that there is a specific averment made in the application qua the interference and the dispossession and therefore necessity arose for moving an application for appointment of the Local Commissioner as the report of Local Commissioner would facilitate the Executing Court to adjudicate the lis between the parties. No harm and prejudice will be caused to the petitioner and urges this Court for maintaining the impugned order.

I have heard learned counsel for the parties and apprised the paper book.

The facts as noticed above are not in dispute and controverted by the parties. The only fact is that when the impugned order was passed, the RSA was pending in this Court but the same subsequently had been dismissed vide order dated 06.10.2016, in my view the trial Court is required to revisit the matter for the purpose of the adjudication of the application, particularly the averments made in the execution application qua the alleged interference in view of the observations made herein above.

Resultantly, the impugned order appointing the Local Commissioner is set aside and the matter is remitted back to the executing Court to decide the execution application afresh from the stage it was filed and decide the same after affording the opportunities to the parties.

The revision petition stands allowed in the aforementioned terms.

The parties through counsel are directed to appear before the
executing Court on 5.4.2018.

February 05, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No