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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8804-2015

Date of decision : 06.02.2018

Leela Ram

... Petitioner(s)

Versus

Omkar

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.R. Yadav, Advocate
for the petitioner.

Mr. Neeraj Jain, Advocate for
Mr. J.S. Ghumman, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 17.11.2015 (Annexure P-6), whereby the application of the petitioner-plaintiff with regard to the appointment of the Local Commissioner for demarcation of the suit property by the Revenue Officer, at the time of framing of the issues, has been dismissed.

Mr. P.R. Yadav, learned counsel appearing on behalf of the petitioner submits that the petitioner-plaintiff had instituted the suit for permanent injunction restraining the respondent-defendant not to interfere in the possession and user of the Gair Mumkin plot compromised in Khewat No.140 Khatoni No.161 Khasra No.140 measuring 1 kanal 03 marals situated within the Gair Mumkin Abadi of Village Kotya Sub-Tehsil Kanina District Mahendergarh and also qua forcible dispossession, much less, with a further prayer that during the pendency of the suit, if the construction

raised, the same may be got demolished. Since the construction was going on, an occasion arose for the petitioner-plaintiff to move an application for appointment of Local Commissioner, which was allowed and the Local Commissioner inspected the spot and submitted his report dated 05.02.2015 (Annexure P-2). The said report is pertained to the ongoing construction, but a necessity arose to move an application on 23.02.2015 i.e. few days after the Local Commissioner submitted his report that in the process of construction, the defendant had encroached upon some portion of Khasra No.140. Since there is already a prayer in the suit for removal of the construction, in case found to have been encroached, thus, it was essential and necessary for the plaintiff to get the property demarcated through an Expert for effective adjudication of the suit, but this fact has not been taken into consideration by the trial Court, therefore, there is abdication, illegality, much less, perversity.

On the contrary, learned counsel for the respondent-defendant submits that no revision lies against the dismissal of the application seeking appointment of the Local Commissioner, even otherwise, there is already report of the Local Commissioner. The role of the Local Commissioner is not to collect the evidence, the plaintiff has to stand to his own leg by leading the direct and cogent evidence, thus, urges this Court for dismissal of the present revision petition by upholding the order, under challenge.

I have heard the learned counsel for the parties and appraised the paper book. The facts as noticed above are not in dispute. It would apt to reproduce the contents of the report of the Local Commissioner (Annexure P-2), which reads as under:-

"In the above captioned case on the orders of the learned

Court I reached village Kotiya today on 5.2.2015 for spot inspection. Notice was issued to both the parties that his plaintiff and defendant. Plaintiff Leela Ram affixed his signatures on the notice. Defendant Omkar was not found present in the village. After giving notice I reached at the disputed plot and I inspected the spot in the presence of the persons present, prepared site plan of the spot and took Photographs. Presence list of the persons were present at the spot was prepared and their signatures were taken. Brother of the defendant namely Vedprakash and his father Amar Singh had refused to put their signatures on the presence list. Sir as per the site plan I prepared the report which is as follows:-

- 1. That marked ABCD is the disputed plot of the plaintiff. In the North of the same there is a rasta, in the West there is house of Subhash etc. and in the South there is panchayat land and in the north-eastern side there is plot of the defendant.*
- 2. In the plot of the plaintiff Mark ABCD bricks, fodder, woods, fuel-cowding cakes and garbage are lying. And in the adjoining north-eastern side of this plot, defendant Omkar has started construction work. Building material bricks, said et cetera are lying at the spot. And defendant has constructed walls Mark DE, DC, CF totally new and these are about 4 to 6 feet high. These walls have been constructed with bricks, sand and cement and now also the construction work is continue at the spot. Near Mark D a labourer is preparing cement masala and on wall Mark EF the masons are making construction. Mark EF is an old wall which is of the house of Bal Ram son of Yadram. Mark CDEF is a small tin shed in the lot of the defendant and the remaining plot is vacant. Masons and labourers are working at the spot.*

Sir by submitting the report of the Local Commissioner, it is prayed that site plan of the spot, notice to the parties, list of presence and photographs are annexed with the report and the same be read as part of the report."

On perusal of the aforementioned report, it is evident that the report of the Local Commissioner only pertained to ongoing construction. However, in paragraph 2 of the application, there is a specific assertion that during the pendency of the suit, the defendant had forcibly encroached some portion of Khasra No.140 i.e. part of the suit property and it is, in this backdrop of the matter, a necessity arose for the petitioner-plaintiff to move an application for demarcation of the suit property by the revenue official. In my view, the Court below should not have swayed away with the previous report as the prayer in the application was not in tandem with the ongoing construction raised on alleged encroachment. There is already a prayer in the suit with regard to the removal of the construction. In my view, it would be essential and necessary for adjudication of the suit to get the property demarcated as a subsequent event had occurred, during the pendency of the suit. The trial Court had remained oblivious to the aforementioned proposition.

Resultantly, the impugned order dated 17.11.2015 (Annexure P-6) viz-a-viz declining of the application for appointment of Local Commissioner is set aside and rest of the order regarding framing of the issues is upheld. The present revision petition stands allowed.

06.02.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**