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

CRR-3922-2016 (O&M)

Date of Decision:07.08.2018

Kewal Singh and another

....Petitioners

Versus

Pritam Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Naresh Prabhakar, Advocate
for the petitioners.

Mr. Satinder Khanna, Advocate
for the respondents.

RAMENDRA JAIN, J. (ORAL)

In this revision, challenge has been laid to order dated 21.09.2016, whereby Revisional Court, setting aside the order dated 11.03.2015 of the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala, remanded the case back for fresh decision.

Briefly, the revisionists before this Court, namely, Kewal Singh and others, filed a complaint under Section 133 Cr.P.C. raising grouse that respondents were in illegal possession of a “*Gair Mumkin Rasta*” left by the Settlement Officer vide demarcation report dated 18.11.2013, creating hindrance in ingress and egress of the complainant to their field.

Upon notice, the respondents appeared before the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala. On joint request by both the sides, Naib Tehsildar, Talwandi Chaudharian was appointed as a Local Commissioner to demarcate the suit land and submit a report thereof.

Consequently, aforesaid Local Commissioner submitted his report dated 09.01.2015 which was duly accepted by both the sides without any objections. Therefore, the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala ordered to consign the complaint of the revisionists, vide order dated 11.03.2015.

Thereafter, the respondents, herein, preferred a revision before the Additional Sessions Judge, Kapurthala challenging the aforesaid order of the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala dated 11.03.2015 on the ground that the report of the Local Commissioner dated 09.01.2015 was wrongly accepted by the Collector-cum-Sub Divisional Magistrate. It was pleaded that same adjustment was made in passage during the consolidation in Khasra No. 115 instead of Khasra No. 31/4/0-2, 24/0-2, 22/10min/0-5, 22/6/0-15, 12/10min/0-6, 11min/0-10, 14/15min/0-7, total measuring 2 Kanal 7 Marlas, but the same was never implemented on the site till date. Therefore, the disputed passage was not workable at the site. The matter was also brought before the Village Gram Panachayat, wherein oral settlement had taken place that passage should be got demarcated afresh as per revised order of the Consolidation, but the respondents, instead of agreeing to the said proposal, approached the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala without disclosing the fact as to from which Khasra Number they intended to get passage.

After hearing both the sides, Revisional Court remanded the matter to the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala, vide impugned order dated 21.09.2016.

Learned counsel for the revisionists submits that the Revisional Court had no jurisdiction to remand the case in its entirety by setting aside the order

dated 11.03.2015 of the Collector-cum-Sub Divisional Magistrate, Sultanpur

Lodhi, District Kapurthala, passed on the basis of consent from both the sides. The respondents themselves have admitted certain judgments passed (Ex. R2 and R3) upholding the consolidation order dated 18.07.1962 as legal and valid. Therefore, the impugned order remanding the case back by the revisional Court is liable to be set aside.

On the other hand, learned counsel for the respondents refuting the above submissions of learned counsel for the revisionist-petitioners, contended that the initial order of consolidation dated 18.07.1962 was set aside in appeal by the Additional Deputy Commissioner-cum-Assistant Director Consolidation, Punjab vide order dated 16.05.2017 (Annexure A-1) annexed with the application bearing No. CRM-35034-2017. Therefore, any passage carved out on the basis of abovesaid order dated 18.07.1962 of the Settlement officer is illegal. Collector-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala was not competent to entertain false complaint of the respondents-complainants under Section 133 Cr.P.C. because there was no nuisance or obstruction to the passage.

Having considered the submissions of learned counsel for the parties, I find the instant petition completely devoid of any merit for the reasons to follow:-

1. Revisional Court has not passed any adverse order against the petitioner herein, rather has only directed the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala to re-appreciate the contentions of both the sides and pass a fresh order to resolve the controversy between the parties in an effective manner.
2. Since initial order of consolidation dated 18.07.1962 was set aside by the Additional Deputy Commissioner-cum-Assistant Director Consolidation, Punjab in appeal, therefore, the matter in dispute requires re-consideration as to from which Khasra number passage has to be given to the parties for their ingress

or egress without any hindrance of his opponent thereby and adversely affecting them.

Therefore, the impugned order, passed by the Revisional Court, is upheld with a direction to the learned Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala to look into the matter as to which of orders of Settlement Officer dated 18.07.1962 and another dated 16.05.2017 serves the purpose for providing passage to both the sides without hindrance and objections of either side. In case, the Collector-cum-Sub Divisional Magistrate, Sultanpur Lodhi, District Kapurthala fails to resolve the controversy between the parties, in that eventuality he will direct the parties to use a particular passage and would refer the matter to Consolidation authorities to resolve the controversy between the parties effectively.

This revision petition is disposed of accordingly.

7th August, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether Reportable : *Yes*