

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1909 of 2018 (O&M)
Date of Decision: March 25, 2019

Ranjit Singh

...Petitioner

Versus

Ramandeep Sharma & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. M.L.Saini, Advocate,
for the petitioner.

Mr. Parvinder Singh, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

CM No.6819-CII of 2019

Learned counsel for the petitioner does not press this application.

Dismissed as not pressed.

CR No.1909 of 2018

The present revision petition is directed against the impugned order, whereby the application of the petitioner-defendant seeking appointment of the Local Commissioner to determine the extent of construction and increase in level by the respondent-plaintiff during the pendency of the suit, has been declined.

Mr. M.L.Saini, learned counsel for the petitioner-defendant submitted that the respondent-plaintiff has sought the injunction against the petitioner-defendant from digging up the street in front of his house

comprised in Khasra No.444 measuring 10 marlas as shown in the site plan ABCD.

Plaintiff in support of the pleadings, led evidence. However, when the defendant closed his evidence on 01.11.2017, plaintiff immediately constructed the ramp in the street by raising level of the street. The court below has erroneously dismissed the application, but relegated the petitioner to avail the remedy of separate suit on the basis of the alleged admission of the construction of the ramp and failed to notice that there was no admission with regard to the raising the level of the street and, thus, submits that the order is not sustainable and liable to be set-aside.

Mr. Parvinder Singh, learned counsel for plaintiff-respondent No.1 opposed the application and as well as the documents. Photographs (Annexure P-3) are of the alleged raising of the level. The revision against the impugned order declining appointment of Local Commissioner is not maintainable. Once the admission is already there, there was no occasion for the petitioner-defendant to seek appointment of the Local Commissioner and the remedy is to file a separate suit and, thus, prayed for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner.

The impugned order is not sustainable for the simple reason that the admission is only with regard to the construction of the ramp but not increasing in the level. The same can only be determined by appointing an expert, i.e., Local Commissioner. The whole purpose of the trial is to facilitate the Court with regard to the claim and counter claim or its level.

I also cannot remain unmindful of the fact that the Court relegated the petitioner-defendant to file a civil suit by not noticing the construction and the provisions of Order 7 Rule 7 CPC.

For the reasons mentioned above, the impugned order is not sustainable and hereby set-aside. The application of the petitioner-defendant for appointment of Local Commissioner is allowed.

Revision petition stands allowed.

At this stage, Mr. Parvinder Singh submitted that in view of such order, he may be granted permission to file the counter claim. I am afraid, the aforementioned request cannot be accepted in view of the provisions of sub-rule (2) of Rule 10 of Order 26 CPC as the effected party is required to seek permission as per the aforementioned provisions.

March 25, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No