

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

**CR No. 6537 of 2017
Date of Decision:10.12.2019**

BAL KISHAN AND OTHERS

...Petitioners

Versus

CHAMAN LAL AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ramneek Vasudeva, Advocate
 for the petitioners.

 Mr. Naveen Batra, Advocate
 for respondent No.1.

 Mr. Vinod Kumar Kaushal, Advocate
 for respondent No.2.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order 28.08.2017 passed by the Civil Judge, (Junior Division), Anandpur Sahib (for short-the Trial Court) through which respondent No.1's application for appointment of a Local Commissioner has been allowed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that respondent No.1 filed a suit seeking therein possession of land measuring 15 marlas detailed and described in the head-note of the plaint (for short-the suit property), after demolition and removal of alleged un-authorised and illegal construction

raised by the petitioners. It was further prayed by respondent No.1 that the petitioners be restrained from dispossessing him and respondents No.2 to 4 from the suit property as also from raising any further construction thereupon.

On being put to notice, the petitioners, who were defendants No.1 to 3, appeared before the Trial Court and contested respondent No.1's claim. During the course of proceedings before the Trial Court, an application was preferred by respondent No.1 to appoint a Revenue Official as a Local Commissioner to visit the suit property and demarcate the same to reveal the encroachments made by the petitioners. The Trial Court allowed respondent No.1's application and appointed Halqa Kanungo as Local Commissioner to visit the spot and demarcate the suit property and then give a report whether any encroachment had been made by the petitioners. Such order passed by the Trial Court is under challenge in the present proceedings.

Learned counsel for the petitioners submitted that the impugned order suffers from non-application of mind and is also against the record as in the impugned order the Trial Court has observed that to respondent No.1's application for appointment of a Local Commissioner no reply had been filed by the petitioners as a reply had infact been filed. It was further submitted that the Trial Court allowed respondent No.1's application on the concession given by defendant No.4/respondent No.2 which could not have been done as respondent No.1 and respondent No.2/defendant No.4 have a common cause.

Learned counsel appearing for respondent No.1 does not

dispute the above factual position but submits that a Local Commissioner has rightly been appointed by the Trial Court to visit the spot and demarcate the suit property and that such report to be furnished by the Local Commissioner would only assist the Trial Court in effectively deciding the *lis* between the parties.

Learned counsel for respondent No.2 adopts the arguments of learned counsel for respondent No.1.

A perusal of the impugned order reveals that respondent No.1's application for appointment of a Local Commissioner had been allowed on two counts. Firstly, that no reply to respondent No.1's application had been filed opposing the prayer made by him and secondly, on the concession given by defendant No.4/respondent No.2.

It is an admitted position that the petitioners, who were contesting defendants before the Trial Court, had in fact filed a reply opposing the prayer made by respondent No.1 for appointment of a Local Commissioner on the ground that demarcation of the suit property had already been got done earlier at the instance of respondent No.2 himself which did not show any encroachment by the petitioners. The impugned order is therefore found to be against the record.

The second reason to allow respondent No.1's application by the Trial Court was on account of a concession given by defendant No.4/respondent No.2. Since the cause of respondent No.1 and respondent No.2/defendant No.4 is common, the Trial Court should have not allowed respondent No.1's plea only on the concession given by such defendant.

In view of the above, the impugned order is set aside and the

matter is remitted back to the Trial Court to decide respondent No.1's application afresh, in accordance with law.

The present petition is allowed in the above terms.

December 10, 2019

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(DEEPAK SIBAL)

JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No