

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 834 of 2019

Date of Decision: 07.02.2019

Ram Piari

.....Petitioner

Vs.

Vijay Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Harsh Chopra, Advocate,
for the petitioner.

Mr. Sukhdev Singh Kanwar, Advocate,
for the respondent-caveator.

AMOL RATTAN SINGH, J. (ORAL)

The petitioner has challenged the order of the learned trial court as also of the appellate court, dismissing his application filed under Order 39 Rules 1 and 2 of the CPC, by which she sought an interim injunction restraining the respondent-defendant from constructing upon what the petitioner contends to be her property, i.e. Khasra no.3319, (of which she states she is the exclusive owner), falling in the revenue estate of Village Dadial, 'Hadbast' no. 640, Tehsil Dasuya, District Hoshiarpur.

Learned counsel for the petitioner who has appeared today and has filed a fresh power of attorney (with a 'no objection' endorsed thereupon by counsel previously appearing), submits that as a matter of fact as regards the demarcation report relied upon by the defendants, firstly, the person at whose instance the demarcation is allegedly stated to have been carried out, i.e. Parladh

Singh, is not a party to the present *lis* and further, as regards the contention (accepted by the learned courts below for the purpose of the application under Order 39 Rules 1 and 2 CPC), that the said demarcation report had been accepted by the son of the petitioner, as a matter of fact she has no son by the name of Davinder Singh (he being the person who is stated to have signed the said report).

He points to the last part of paragraph 3 of the written statement filed by the respondent-defendant before the trial Court as also to paragraphs 3 and 12 of the impugned order, to submit with regard to the reference to Davinder Singh as the son of the petitioner-plaintiff.

Learned counsel for the respondent-caveator on the other hand submits that the reference to Davinder Singh in the written statement, as also in the impugned order, is erroneous because though Davinder Singh, son of Sadhu Singh, had also signed the demarcation report aforesaid, it was signed also by Hardev Singh, son of Ghmanda Singh, i.e. the son of the petitioner.

Learned counsel for the petitioner on instructions does not of course deny that Hardev Singh is one of the sons of the petitioner.

He further submits that as a matter of fact even the petitioner had made an application to the Department of Revenue (through the '*Sewa Kender Langarpur*', District Hoshiarpur), for demarcation of the petitioners' holding, i.e. '*Khasra*' No. 3319, but that application is still pending, it having been filed on 28.01.2019.

That being the situation, learned counsel for the respondent very fairly does not object to a demarcation of the two '*Khasra*' numbers being carried out by a revenue official in the presence of parties, even for the purpose of an interim injunction in favour/against the parties.

Learned counsel for the respondent has also submitted that in fact the respondent has given an undertaking before the trial Court already, to the effect that if he is found to be in possession of any part of '*Khasra*' no. 3319, he would immediately vacate the same and also demolish any construction made by him on the said '*Khasra*' number.

Consequently, it not being in dispute that the petitioner is the owner of '*Khasra*' no. 3319 and the respondent is the co-owner of '*Khasra*' nos. 3322 and 3323, in the revenue estate of village Dadial, Tehsil Dasuya, District Hoshiarpur, and the only issue being that as per the petitioner, the respondent has encroached upon '*Khasra*' no. 3319 by way of a construction which is stated to be still on-going, it is considered appropriate that the trial Court be directed to appoint a '*Kanungo*' from the Department of Revenue, to conduct a demarcation in the presence of both parties and their representatives, to determine as to whether each party is in possession of their entire holding as per the revenue record, or whether the respondent has encroached upon any part of '*Khasra*' no. 3319 owned by the petitioner; or whether there has been any encroachment by the petitioner on '*Khasra*' nos. 3322 and 3323.

Learned counsel for the petitioner, on instructions, has made a statement that if the petitioner is found to be encroaching any land owned/co-owned by the respondent, contained in '*Khasra*' nos. 3322 or 3323 (even though that is not a contention by the respondent before the trial Court), the petitioners would vacate the same.

Both parties are held bound to that statement.

Consequently, the impugned orders are set aside and this petition is disposed of in the aforesaid terms.

The petitioner having been shown to be 108 years old in the memo of parties, the trial Court is directed to ensure that the revenue official is appointed immediately and the demarcation is carried out within a period of 15 days.

The orders passed by the learned courts below, on the application under Order 39 Rules 1 and 2 CPC having been set aside by this Court, naturally, after the report of the Local Commissioner (*Kanungo*) is received by the trial Court, it would pass a fresh order on that application.

February 07, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes