

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

C.R. No. 3664-2019 (O&M)

Date of decision:- 01.07.2019

Brij Bhan s/o Sh.Dungar Singh

...Petitioner

Versus

Ravish Trehan s/o Pyare Lal Saraf
s/o late Sh. Dewan Chand Saraf

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Alok Jain, Advocate
for the petitioner

RITU BAHRI J.

The present petition is directed against order dated 13.05.2019 (P-1) passed by learned Civil Judge (Jr. Divn.) Faridabad whereby application (P-2) under Section 151 CPC for additional evidence filed by the plaintiff-respondent herein, has been allowed.

Brief facts of the case are that plaintiff-respondent has filed a suit for possession submitting that he is owner of 327 kanals 16 marlas of land situated in revenue estate of village Ankhir, Tehsil Badkhal, District Faridabad, as detailed in para No. 1 and 2 of the plaint. The plaintiff has submitted that defendant-petitioner is neighbourer of plaintiff-respondent has encroached and trespassed land of the plaintiff-respondent measuring 2 kanals 14 marlas out of Rect. No. 61, Killa No. 23/1/2(4-0), Rect No. 65, Killa No. 3/1/2(0-18), Killa No. 3/3(1-10), Killa No. 4/2/2(1-0).

The plaintiff-respondent moved an application before Tehsildar, Badkhal for demarcation of the suit property vide application dated 14.03.2019 and the same was allowed on the very same day. The office of Kanungo, Badkhal was directed to demarcate the land detailed in

para No. 2 of the application. The demarcation was carried out through DGPS machine through Akash surveyor of Latest Card Surveyor and found that defendant-petitioner has encroached and trespassed the land of plaintiff-respondent. The certified copy of demarcation report dated 19.03.2019 was provided to plaintiff-respondent only on 10.04.2019.

Learned counsel for the petitioner contends that the plaintiff-respondent was granted number of opportunities to lead evidence since 16.08.2017 and vide zimini order dated 11.03.2019, the oral evidence of the plaintiff-respondent was closed and at that point of time, no prayer was made by the plaintiff-respondent to file the demarcation report. Learned counsel submits that the defendant-petitioner has filed his examination in chief on 08.04.2019 and on the request of plaintiff-respondent, the case was adjourned for cross examination for 11.04.2019. The application for leading additional evidence was filed at a very belated stage and should not have been allowed.

Learned counsel for the petitioner is relying upon judgments of this Court in cases of ***Saroj vs. Charan Singh and others, 2017(4) PLR 674*** and ***Amarjit Singh vs. Rachhpal Singh and another, 2017(2) PLR 349.***

Heard learned counsel for the petitioner.

The judgments cited by learned counsel for the petitioner are not applicable to the facts of the present case, as in ***Saroj's case (supra)***, the suit had been filed in the year 2006 and issues were framed in May, 2007. After closure of evidence of the plaintiff, the defendants were granted 06 opportunities to lead evidence, which was closed on 15.02.2010. It is thereafter, defendant No. 2 came to know that her father had filed a suit in

the year 1972 and the plaint, vakalatnama and the replication of that suit had been thumb marked by the father. Thus, she wanted to lead additional evidence but the application was dismissed as there was nothing on record to show that defendants could not produce their evidence inspite of exercise of due diligence. The applicant had failed to challenge the order closing the evidence.

Further in *Amarajit's case (supra)*, the application for leading additional evidence was justified on the ground that it was due to lapse on the part of the counsel that the said affidavit could not be produced on record earlier. This Court dismissed the petition seeking setting aside of order whereby application filed by the petitioner seeking permission to lead additional evidence by way of producing an affidavit was dismissed. It was held that shifting of responsibility on counsel is no ground for allowing application for additional evidence.

In the present case, it is not disputed that the plaintiff had moved an application for appointment of Local Commissioner before the Court below which was dismissed and thereafter, this Court also dismissed the petition filed by the petitioner against the order passed by the Court below wherein it was observed that the plaintiff-respondent is at liberty to get the property demarcated outside of Court and by moving an independent application to the appropriate authority. Thus, the plaintiff-respondent filed an application for demarcation of the suit property vide application dated 14.03.2019 and the same was allowed on the very same day. The demarcation was carried out through DGPS machine through Akash surveyor of Latest Card Surveyor and found that defendant-petitioner has

copy of demarcation report dated 19.03.2019 was provided to plaintiff-respondent only on 10.04.2019. Thus, there is no delay in making the application for leading additional evidence. The delay in producing the report cannot be attributed to the plaintiff-respondent. The report of Local Commission is essential for effective adjudication of lis between the parties. Thus, the Court below has rightly allowed the application of the petitioner, subject to cost of Rs.5000/- for delay in filing the application.

In view of the discussion made above, the present petition stands dismissed being devoid of any merit.

01.07.2019

G Arora

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No