

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

**CR No.6010 of 2019(O&M)
Date of Decision: 25.11.2019**

Amar Singh (since deceased) through his LRsPetitioners

Versus

Avtar Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.K. Jain, Advocate
for the petitioners.

Mr. Ashish Gupta, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have laid challenge to the order dated 11.09.2019 passed by Civil Judge (Junior Division), Dera Bassi, vide which Local Commissioner was appointed to demarcate the suit property.

[2]. It appears from the record that earlier a suit for permanent injunction was filed by the respondents side against the petitioners, in which Local Commissioners had demarcated the suit property the then involved on two occasions. Owing to subsequent development in the said suit which according to the

respondents is that the petitioners had encroached upon some portion during pendency of the suit, they had to withdraw the said suit.

[3]. Thereafter, the present suit for possession came to be filed by the present respondents/plaintiffs in respect of land measuring 8X55' as shown by letters 'EFGH' in the site plan comprised in khasra No.247(0-15) shown by words 'ABCD' within the revenue estate of village Rauni, Tehsil Dera Bassi, District SAS Nagar. Plaintiffs also sought mandatory injunction, directing the defendants to remove the construction raised over the portion 'EFGH' comprising in aforesaid khasra number as shown in the site plan and hand over the vacant and physical possession of the portion to the plaintiffs.

[4]. In the present suit also, Local Commissioner was appointed who has submitted his report dated 21.04.2018. Against the aforesaid report, the petitioners have preferred objections before the trial Court which are pending.

[5]. Learned counsel for the petitioners submitted that the demarcation reports as conducted in the suit for permanent injunction have already been exhibited on record, therefore, this would be the fourth demarcation to be conducted by the Local Commissioner under the impugned order.

[6]. Admittedly, the objections have been filed by the

petitioners against the third demarcation report conducted in the present suit. At the time of issuance of notice of motion, it appears that learned counsel for the petitioners has made some wrong averments with regard to the extent of demarcations conducted in the present suit. The projection was given that three Local Commissioners were appointed in the present suit and appointment of Local Commissioner on fourth occasion, would nullify the effect of earlier demarcation reports. The factual position is found to be otherwise. Two demarcations were conducted in the earlier suit which according to the learned counsel for the respondents were in a suit for permanent injunction filed by the respondents.

[7]. The factum of present encroachment was not in issue for which suit for partition has been filed. Petitioners themselves are not agreeing with the demarcation conducted in the present suit and they have already filed objections against the said demarcation. If the petitioners are agree, the respondents can rely upon the aforesaid demarcation conducted in the present case. Since the petitioners themselves are not agreeing with the demarcation report, therefore, the trial Court has rightly appointed Local Commissioner for conducting demarcation in accordance with law.

[8]. It is a settled principle of law that once the trial Court

has exercised its jurisdiction in the context of appointment or refusal to appoint a Local Commissioner, the indulgence by the High Court cannot be granted. In **Rajinder & Co. Vs. Union of India and others, 2003(1) RCR (Civil) 755**, the Hon'ble Apex Court has held that the question whether the report of the Local Commissioner is finally acceptable or not, would be decided by the concerned Court *de hors* the order passed by the authority concerned. High Court cannot interfere with the order of the trial Court appointing the Local Commissioner for inspection of the site and to file a report. The view expressed in **Rajinder & Co. Vs. Union of India and others case (supra)** has been followed by the High Court in **Harpal Singh Vs. Harmohinder Singh and others, 2013(2) RCR (Civil) 892**. Petitioners would be well within their right to file objections (if any) against the demarcation report if comes against their interest.

[9]. At this stage, no such valuable right of the petitioners have been decided, particularly when they have already resorted to by filing of objections against the demarcation conducted in the present case. Veracity of demarcations conducted in the earlier suit, would be decided by the trial Court with reference to facts on record. At this stage, no final adjudication has been made viz-a-viz the rights of the parties involved in the suit.

[10]. For the reasons recorded hereinabove, I find that there is no ground to interfere in this revision petition. This revision petition is accordingly dismissed.

25.11.2019

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No