

107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 16465 of 2018
DECIDED ON: JANUARY 07, 2019

BRIJLAL

.....PETITIONER

VERSUS

SAJJAN SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Mukesh Yadav, Advocate
for the petitioner.

AVNEESH JHINGAN, J (ORAL)

Aggrieved of the order dated 01.11.2018 passed by learned Additional District Judge, Narnaul (hereinafter referred to as 'Appellate Court') whereby, the appeal filed by the respondent No.1/defendant (hereinafter referred to as 'respondent') was dismissed but the learned trial Court was directed to appoint the Local Commissioner to demarcate khasra No. 112 and 203/3 and in case the petitioner-plaintiff (hereinafter referred to as 'petitioner') had encroached upon any portion of khasra No.203/3, he was made liable to pay amount of ₹50,000/- as penalty.

The facts in brief are that the petitioner filed a suit against respondent that petitioner is the owner in possession of the land comprising khewat No. 127, khatauni No. 130 kita 13 measuring 50 kanal 03 marla as per jamabandi for the year 2014-15 situated at village Lawan, Tehsil and District Mahendergarh. On the suit land measuring 0 kanal 08 marlas gair mumkin

abadi the petitioner had constructed a house and it was prayed that the respondent be restrained from interfering in the peaceful possession and usage of the said land. Alongwith the suit, an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 (for short 'CPC') was also filed. The application was allowed by learned trial Court vide order dated 12.09.2018. Aggrieved of the said order, the respondent filed an appeal before the Appellate Court.

The learned Appellate Court after considering the fact that the petitioner is owner in possession of khasra No. 112 measuring 8 marla and respondent is the owner in possession of khasra No. 203/3, dismissed the appeal vide impugned order dated 01.11.2018. However, a direction was given to the trial Court to appoint the Local Commissioner to demarcate khasra No. 112 and 203/3 and in case it was found that the petitioner-plaintiff has encroached upon any portion of khasra No.203/3, he would be liable to pay amount of ₹50,000/- as penalty and his construction from that part of khasra No. 203/3 shall be removed. Aggrieved of the said order the present civil revision petition has been filed.

Learned counsel for the petitioner contends that the amount of penalty imposed by the Appellate Court is on higher side and the same should be made reasonable.

The suit was filed by the petitioner without getting the demarcation of Khasra No.112. An application under Order XXXIX Rules 1 and 2 of the CPC was filed and pressed upon as the petitioner was raising construction during the pendency of suit. The Appellate Court had in order to find the ground reality directed the trial Court to appoint a Local Commissioner for

demarcation of khasra No.112 and Khasra No. 203/3. The petitioner was duty bound before raising construction after ensuring that he is not encroaching upon the land owned by the respondent. The appointment of Local Commissioner will safeguard the interest of both the parties.

Petitioner is continuing with the construction, in case there is no encroachment by the petitioner there is nothing to be worried about. As the condition had been imposed that if it is found that petitioner has encroached upon any portion of khasra No. 203/3, he would be liable to pay a penalty of ₹50,000/-. In case an interim order is being used for the purpose of carrying on construction to encroach upon Khasra No. 203/3, the order passed by the Appellate Court is fully justified and calls for no interference.

Keeping in view that the petitioner has built a house at village Lawan, Tehsil and Distt. Mahendergarh and it is merely of 8 marlas, the penalty amount of ₹50,000/- appears to be on higher side and the same is reduced to ₹40,000/-.

For the view taken, at this stage, it would not be appropriate to issue notice to the respondents. However, in case the respondents is aggrieved of the order passed by this Court, they would be at liberty to revive the same by moving an appropriate petition.

The civil revision petition is disposed of, as per the afore-said terms.

JANUARY 07, 2019
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(AVNEESH JHINGAN)
JUDGE

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