

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

**CR No.8482 of 2018(O&M)
Date of Decision: 13.02.2019**

Rita Datta

.....Petitioner

Versus

Rajiv Kumar and others

.....Respondents

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

Present:Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. S.S. Dinarpur, Advocate
for respondent No.1.

Mr. Lekh Raj Sharma, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 30.08.2018 passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri vide which application filed by the Local Commissioner was allowed and the report submitted by

him was accepted thereby directing the petitioner to deposit an amount of Rs.13 lacs in the Court or in alternative if she agrees then said amount which has already been deposited by the applicant in the Court be adjusted from her share.

[2]. Few facts are relevant to be noticed. Earlier three revision petitions were decided by the High Court vide common order dated 05.08.2013. The litigation was between the same parties in respect of same properties. Petitioner is the sister of respondent No.1. Respondent No.1 made a claim to the properties on the ground that the properties are ancestral in nature and he has a share to the extent of $\frac{2}{3}$ rd whereas petitioner/sister is entitled to $\frac{1}{3}$ rd share. On the other hand, petitioner staked her claim to the entire property on the basis of Will executed by her mother. The mother herself was beneficiary of the Will executed by Tilak Raj. Civil suit for declaration was filed by respondent No.1 seeking declaration to the extent of $\frac{2}{3}$ rd share in his favour whereas remaining share of $\frac{1}{3}$ rd was sought to be conferred upon the petitioner/sister. He also sought injunction seeking to restrain the petitioner/sister from interfering in his possession. Petitioner/sister also filed a suit for declaration staking ownership of the whole property and injunction on the basis of Will. Another suit was filed by respondent No.1/brother seeking injunction against the

petitioner/sister from securing an electricity connection.

[3]. From interlocutory orders arising out of aforesaid three suits, three revision petitions i.e. CR No.3407 of 2009, CR No.3060 of 2009 and CR No.5273 of 2011 were filed by the parties in the High Court.

[4]. In respect of standing trees, the Court found that safeda trees were in existence and the same were ready to be harvested. Keeping in view the hardship stated by the parties, the Court was of the opinion that an Advocate Local Commissioner could be appointed for carrying ministerial act of cutting the crops after due notice to the parties. After the cutting of trees, the sale proceedings were to be deposited in the Court. The Local Commissioner was held entitled for his remuneration of 2% of the value of the crops cut. The Local Commissioner was to maintain the record of expenses incurred and was to deposit the balance amount to the credit of the suit instituted by the petitioner/sister. Para Nos.4 and 5 of the order dated 05.08.2013 passed by the High Court were to the following effect:-

“4. The trial of the suit in the sister's suit appears to have come towards the final stages where the plaintiff sister has examined herself and it is posted for cross-examination of the defendant's witness. There are trees and other crops in the property and the

plaintiff appears to have cut a portion of the crops under the supervision of the brother himself, but the entire operation could not be carried out by virtue of an order of status quo obtained by the brother in his suit. When the arguments were underway, I sought for a statement from the counsel as to the present status of the properties. Both parties state that there are safeda trees which are about 18 to 19 years old and they are ripe for being cut. The counsel for the brother, however, argues that it will be difficult to undertake a cutting now in the active monsoon season. I am of the view that the proceedings may run for some more years and before the issue of order of injunction, one way or the other, the crops have to be cut and the proceeds safeguarded. I am of the view that an Advocate Local Commissioner could be appointed for carrying out the ministerial act of cutting the crops in the suit property after due notice to both parties, have the trees cut and deposit the sale proceeds. The Advocate Commissioner shall be paid remuneration from out of the net value at 2% of the value of the crops cut. He shall duly account for the expenses incurred and deposit the balance of amount to the credit of the suit instituted by the sister.

5. The cutting of the crops may leave the property in a contentious stage of both the parties scrambling for possession. I will not make much of the fact that the sister stated that the brother had been in exclusive possession of the property in mutation proceedings. The possession to vacant land, after trees are cut must follow prima facie claims to title. The sister

relies on a Will and also on the revenue entries standing in her name. After the crops are cut, I am of the view that it should be the sister whose possession must be protected for that would follow what is stated from the revenue entries. The brother appears to have obtained substantial benefits already in relation to the family properties to the extent of 12 ½ acres of land. He will not, therefore, be seriously prejudiced, if he is prevented from in any manner enjoying the suit property till the final conclusion of the proceedings. This observation is purely provisional and will not colour the course of trial before the court below regarding the entitlement to declaration and injunction in the manner sought for by the sister.”

[5]. Thereafter, Local Commissioner filed a report in the Court on 31.05.2014 that he had visited the spot on 24.12.2013 at about 1.00 PM in the presence of the parties and identified the land and the trees standing there. Poplar and safeda trees were found standing in the land. The trees were very old and some of the trees were dried up. Some of the other trees were damaged. Local Commissioner tried to contact the professionals who were dealing in cutting and removing the trees, but none came forward to execute the job. Many contractors visited the site, but refused to cut and remove the trees on labour basis. Finding no alternative, the Local Commissioner contacted the parties and their counsel personally and apprised them about

the situation. Both the parties advised him to sell the trees in lump sum to the highest bidder. The consent of the parties was recorded in writing by way of affidavits which were duly signed by their Advocates. Both the parties were asked to bring their respective bidders to get the maximum sale price of the trees. The contractors and timber merchants put the maximum price of the trees from Rs.50 lacs to Rs.65 lacs. The information was shared with the parties. Local Commissioner again made an effort to get the maximum sale price of the trees and contacted number of contractors and timber merchants, but none came forward to quote more than Rs.65 lacs. In the meantime, the petitioner advised the Local Commissioner to contact one contractor namely Mohd. Gafur. Learned counsel for the defendant also advised to contact the owner of Punjab Timber Merchant. On their advise, Local Commissioner contacted Mohd. Gafur. The contractor visited the spot in the presence of the parties on 28.12.2013 and after seeing the trees, he quoted value of the trees to be Rs.70 lacs in lump sum. The matter was again discussed with the parties and their Advocates. Both the parties consented for the assignment to be handed over to the contractor. They executed affidavits in this regard and agreed to sell the trees for Rs.70 lacs to the highest bidder i.e. Mohd. Gafur. Local Commissioner entered into an agreement to sell

with Mohd. Gafur. As per agreement, Mohd. Gafur deposited an amount of Rs.10 lacs as security with the Local Commissioner and also deposited an amount of Rs.7 lacs prior to undertaking assignment of cutting the trees. In total, Mohd. Gafur paid an amount of Rs.17 lacs to the Local Commissioner. The process of cutting the trees came to halt due to rain. Thereafter, petitioner and Mohd. Gafur contacted the Local Commissioner. Petitioner offered to execute the job with the help of Mohd. Gafur and told the Local Commissioner that he would make the balance payment of Rs.53 lacs to the Local Commissioner as per agreement with Mohd. Gafur. He further offered to pay the entire balance sale consideration upto the cutting and removing of 50% of the total trees. Thereafter, petitioner started cutting and removing the trees with labourers and also started making payment to the Local Commissioner. When the petitioner failed to make the payment of trees as per her commitment despite removing 80-90% trees, then the Local Commissioner raised objections. On making contact, the petitioner explained that she could not make the payment as per her commitment due to sudden illness of her husband and further assured the Local Commissioner that she would make the payment of Rs.10 lacs out of the balance price of the trees upto 28.02.2014 and also agreed to make the payment of entire balance amount upto

06.03.2014. She also requested the Local Commissioner to allow her to cut and remove the remaining standing trees which were 175 in number. Petitioner also handed over six cheques filled with the amount to the Local Commissioner as security. Believing the version of the petitioner, Local Commissioner allowed the plaintiff to cut and remove the remaining trees. Thereafter, Local Commissioner returned one cheque to the petitioner on payment of Rs.10 lacs as per commitment and Local Commissioner in total received Rs.57 lacs from the petitioner and Mohd. Gafur. Remaining amount of Rs.13 lacs was the bone of contention between the parties for which subsequent proceedings were undertaken between them leveling allegations and counter allegations.

[6]. Against the report of Local Commissioner, petitioner filed objections thereby raising a plea that total amount of Rs.70 lacs was paid to the Local Commissioner and it was his duty to deposit the same before the Court after refunding the amount of expenses. Petitioner raised allegations against the Local Commissioner that he has not refunded the amount of expenses of Rs.14,98,718.91 to the objector in spite of repeated requests. She further claimed that the entire amount of Rs.70 lacs was paid to the Local Commissioner which the Local Commissioner did not deposit with the Court completely. Rs.2,26,000/- has not

been returned. Value of wood of one trolley i.e. Rs.20,000/- has not been given. Besides that, Local Commissioner was not entitled to 2% which he has illegally deducted to the tune of Rs.1,14,000/- because 2% was to be given to the Local Commissioner if he would have administered the ministerial work of cutting and removing the trees as per directions of the High Court. In this manner, the Local Commissioner was held liable to return an amount of Rs.1,14,000/- which he has deducted towards his fee.

[7]. Operative part of order dated 22.07.2014 passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri is reproduced hereasunder:-

“2. From the perusal of above order, it is crystal clear that the Local Commissioner was to cut the crops standing in the suit property after due notice to both the parties and deposit the sale proceeds to the credit of the suit instituted by sister namely Reeta and out of which 2% commission was to be paid to him, for crop cut, by the Court. In that case, Local Commissioner is hereby directed to deposit the entire sale proceed after deducting the expenses, if any, along with 2% commission, which he had deducted himself, in the Court and deposit the same to the credit of the suit instituted by Smt. Reeta. He is given 15 days from today to do the needful. In case of non-compliance of the order of Hon'ble High Court, it is open to the parties to initiate necessary action in accordance with law.

Application be tagged with the main file and the same be consigned to the record room.

Announced

(Jatin Garg)

Dated: 22.07.2014

Civil Judge (Junior Division)

Yamuna Nagar at Jagadhri”

[8]. Thereafter, CR No.5235 of 2014 was filed by the Local Commissioner. Vide order dated 11.08.2014, the same was dismissed as withdrawn with a liberty to the Local Commissioner to file application at appropriate stage stating therein the changed circumstances and agreement between the parties duly supported by their affidavits. In the event of filing such application, the same was ordered to be decided *de hors* the observations made in the aforesaid order.

[9]. Thereafter, the Local Commissioner filed an application for acceptance of his report and to direct the plaintiff/petitioner to deposit the balance amount of Rs.13 lacs. The said application was contested by the petitioner. Both the parties led their evidence before the trial Court. Petitioner in her cross-examination stated in the following manner:-

“-----But it is correct that Sh. Gulab Singh, Advocate had given contract regarding cutting of trees in Rs.70 lacs. As per contract Gafur never came for cutting of trees. I do not know that Gafur made any payment to Sh. Gulab, Advocate or not. I made a contract in December 2013 with Sh. Gulab Singh for cutting trees

in Rs.70 lacs. Initially agreement of Sh. Gulab, Advocate for cutting trees, was made with me. Agreement with me for cutting of trees was entered in writing in December 2013. I do not have said agreement with me. I do not have any copy of agreement of December 2013 with me. I signed the agreement. Agreement Ex.A-5 is the same agreement, which was made between me and Sh. Gulab for cutting of trees. In agreement it was not written that I will make payment after deducting the expenses incurred on cutting of trees. Volunteered this is mentioned in Courts order. I have made payment of total Rs.70 lacs to Sh. Gulab. I cannot state, as and when how much payment is made to Sh. Gulab. Volunterred that Sh. Gulab did not issue any receipts. In January 2014 I made payment of Rs.5-7 lacs to Sh. Gulab Singh, I cannot state the exact amount and exact date.

-----I do not remember as on what date I sold wood at first time. Volunteered in Ex.D-1. After selling trees I gave Rs.70 lacs to Gulab Singh. Then stated trees were very old, same were 15-16 years old and full amount Rs.70 lacs was not achieved. By selling almost trees amount of about Rs.50 lacs was received. Balance amount I taken from my husband and Muthoot Finance, Faridabad office. I took Rs.5-6 lacs from Muthoot Finance, Rs.3 ½ lacs from my husband and remaining amount I generated myself. I have not brought any evidence of self generated amount. Volunteered I have also borrow some amount from my elder daughter. Payment of workers was stopped because I had no many. I made payment of workers in

2-3 years. My trees were sold in total Rs.62,12,078.75. Out of this after deducting fare, commission, cutting charges, loading-unloading charges only Rs.55,24,809.69 was left with me. I sold all trees on cash basis. I received the amount as mentioned in my calculation Ex.D-1. But the payment I made to Sh. Gulab is not entered in Ex.D-1. Volunteered, because in Ex.D-1 entries are of day to day basis and Sh. Gulab Singh demanded payment of over Rs.5 lacs. Preparation of day to day statement was not my duty, it was duty of Sh. Gulab Singh. Commission agent paid me after deduction he used to pay after deduction of all expenses entered in Ex.D-1. During the time I was cutting trees in those days my husband was admitted in Metro Hospital, Faridabad due to heart problem. He remain admitted in hospital for 1-2 days. My husband had earlier ballooning. After cutting of trees I had heart problem and three stunts were put. I do not remember as on what date Sh. Gulab Singh had taken Rs.2,26,000/- from me. Volunteered he took in 2-3 installments and only one trolley was sent. Gulab Singh had not taken Rs.20 thousand in cash from me but he had taken one trolley wood worth Rs.20 thousand from me. Gulab Singh did not take Rs.1,14,000/- in cash from me. He might has deducted from Rs.70 lacs. Without deducted expenses of Rs.14,98,718.91/- I made full payment to Sh. Gulab Singh. I expended on day to day basis, therefore, payment was made without deduction of expenses. At the stage cross deferred due to lunch break.

----- He said may be Rs.70 lacs be not procured. I

took trees in Rs.70 lacs on asking of Sh. Gulab Singh but myself did not made any assessment. When Gulab Singh sold me these trees for Rs.70 lacs at that time I did not know as to whether Rs.70 lacs could not be received from these trees or not. Volunteered I went to court that my land be vacated so that I can cultivate my land, there was no dispute regarding trees. I received total Rs.55,24,809.69 from trees. The agreement entered between me and Sh. Gulab Singh same was in writing. I signed agreement Ex.A-5 after reading it. All three pages of Ex.A-5 bears my signature. I do not remember terms of Ex.A-5, but regarding payment schedule was framed. It is possible that term No.3 of Ex.A-5 which I heard was decided so. I received back a cheque in January 2014 by paying Rs.10 lacs to Sh. Gulab Singh. Thereafter, I did not take any cheque from Gulab Singh. Because Gulab Singh did not issue any receipt. I cannot state, as how much payment I made to Gulab Singh on 19.02.2014. I made last payment in April or May.-----”

[10]. On the basis of material available on record, Civil Judge (Junior Division), Yamuna Nagar at Jagadhri found that the petitioner has admitted in her cross-examination that after cutting and selling of trees, total amount of Rs.70 lacs was not collected. Even she has not placed on record any such material to show that she had withdrawn any amount from any account of her or her relative for paying the amount to the Local Commissioner. She has also admitted that the Local

Commissioner did not give any receipt of payment to her despite several requests. She never moved any complaint to the Court, nor brought the said fact to the knowledge of the Court at any point of time. No such complaint against the Local Commissioner was filed to the effect that the Local Commissioner was not performing his duties as per requirement. The trial Court on the basis of evidence came to the conclusion that the petitioner has not paid an amount of Rs.13 lacs to the Local Commissioner. The Liability was fixed on the petitioner to pay an amount of Rs.13 lacs and she can deposit the same in the Court.

[11]. During course of arguments before this Court, learned counsel for respondent No.1 has pointed out that Will in favour of the petitioner has already been declared to be forged. Learned counsel for the Local Commissioner has pointed out that the Local Commissioner has been unnecessarily victimized during the aforesaid process. Reputation of the Local Commissioner being the Advocate has been unnecessarily thrown to the wind by leveling false allegations of retaining an amount of Rs.13 lacs. Learned counsel for the Local Commissioner further pointed out that the present revision petition from page Nos.27 to 32 is in the context of repeated allegations against the Local Commissioner. The trial Court has

rightly found that the amount of Rs.13 lacs has not been paid by the petitioner to the Local Commissioner. It has been brought to the notice of the Court that in FIR No.362 dated 22.08.2008 registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station City Yamuna Nagar, the petitioner and others have been held guilty for the offence under Section 471 read with Section 120-B IPC and they have been sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.500/- for the offence under Section 471 read with Section 120-B IPC. An appeal is statedly pending against the aforesaid conviction.

[12]. During course of arguments, learned counsel for the petitioner submitted that the petitioner is ready to settle the dispute with her brother. An amount of Rs.13 lacs can be deducted from her entitlement arising out of sale proceeds of the crops.

[13]. At this stage, the settlement in the absence of agreed terms cannot be visualised by this Court. No interference can be made in the impugned order dated 30.08.2018 passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri. This revision petition is accordingly dismissed. However, the parties would be at liberty to devise their means to settle things in due course, if at all they are agreeable to enter into any such

amicable resolution of dispute. Local Commissioner would also be at liberty to initiate lawful proceedings in the context of his harassment at the hands of the petitioner in accordance with law.

13.02.2019

Prince

Whether reasoned/speaking

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No