

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

CR No. 3210 of 2018

Date of Decision: 9.1.2020

Ganpat Gir Chela Bhudh Gir Chela Som Gir

...Petitioner

Vs.

Deh Sambhal Ghar Atte Deh Sanskar Sudhar Committee and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate with
Ms. Payal, Advocate
for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. This revision arises out of an order passed by the learned Civil Judge, Senior Division, Shaheed Bhagat Singh Nagar in Civil Suit No. 198 of 2015 allowing an application filed by the plaintiff for appointment of a Local Commissioner from the Revenue Department for demarcation of the suit land admeasuring 107 kanals 12 marlas comprised in Khasra No. 384/1, 384/2, 384, 386 and to ascertain the extent of encroachment made by the defendant over the disputed part of the suit property.

2. Paragraph No.2 of the application deserves to be read to test the correctness of order dated 9.4.2018 in the confines of the prayers, which reads as follows:

“2. That plaintiff has filed the suit for declaration and suit for possession of the property measuring 88K1 03 Mls out of suit property measuring 107 K1 12 Mls. As the area of the encroached property measuring 88 K1 03 Mls is comprised in different four khasra numbers, to ascertain the exact and proper extent of encroachment by defendant over the part of suit property, the demarcation is required to be conducted.”

3. The requisite demarcation of the property has been ordered for proper and effective adjudication of the issues in the suit and to ascertain the exact and proper extent of encroachment. In the impugned order, the trial Judge has observed that a Local Commissioner be appointed to determine “whether the defendant has any illegal possession of the suit property or not...is quite essential”. The operative part of the order reads as follows:

“Since plaintiffs have filed the present suit claiming relief of possession with regard to property measuring 88 kanals 3 marlas falling khasra No.384, 386, 384/1 as such in order to determine whether defendant is in illegal possession over the suit property or not, the appointment of Local Commissioner is quite essential for the just decision of the case. As such, Ilaqa Kanungo is appointed as Local Commissioner for this purpose, who is to submit his report or on before the date fixed with

regard to the fact as to who is in possession of the property falling in khasra No. 384, 386, 384/1. The fees of such Local Commissioner is fixed at Rs.2,000/-. Now to come up on 01.05.2018 for awaiting such report.”

4. This order is assailed by the petitioner who is the defendant in the suit asserting that, firstly, the Local Commissioner ought not to have been appointed to gather evidence at the initial stage. Secondly, the observation presumes that the defendant is in illegal possession which predetermines encroachment which is a grave error committed by the trial Court in assuming that the defendant is in fact in illegal possession, and Thirdly, the order goes well beyond the application which was for demarcation and for determining the extent of encroachment by the defendant, if any.

5. Learned Senior Counsel appearing for the respondent/plaintiff supports his application but is unable, when asked to do so, to properly support that part of the order from where an inference can be drawn that the defendant is in illegal possession over part of the suit property, which means that the defendant is an encroacher of the property of the plaintiff. No such presumption can be drawn at this stage as even the report of the Local Commissioner when it comes into existence will remain subject to other evidence and will be open to objections raised by any of the parties who may feel aggrieved and show to the Court that they are likely to be affected by the work of

the Local Commissioner. Therefore, in my considered view, the Local Commissioner should confine himself to only the demarcation of properties according to the revenue records without expressing any opinion on encroachment which is the judicial function to be performed by the trial court on the totality of evidence yet to be adduced by the parties. He would only determine if there is any overlapping beyond the limits of land held by either of the parties.

6. The nature of the property is also open to determination by the trial Court from the record of consolidation and other relevant material to determine the character and the boundaries of the property inter se.

7. Accordingly, the impugned order dated 9.4.2018 is modified. There can be no presumption of illegal possession before the entire evidence comes in and is duly considered at a final hearing. The trial court will keep an open mind. The case is remitted. The Local Commissioner can proceed and submit his report. If the parties feel aggrieved by the report, they may file objections which will be considered by the learned trial court in accordance with law.

8. The petition stands disposed of as above.

(RAJIV NARAIN RAINA)
JUDGE

9.1.2020

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