

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.7425 of 2016

Date of Decision: 20.01.2020

Om Parkash

..... Petitioner

versus

Ram Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Manoj Kumar Sood, Advocate, for
for the petitioner.

Ms. Deepa Jain, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order passed by the learned Civil Judge (Junior Division), Faridabad, dated 06.10.2016, by which the objections filed by the petitioner against the report of the local commissioner appointed by that court for the purpose of demarcation of the suit property, has been dismissed.

It has been held by that court that firstly, the objection being that the demarcation was not undertaken from the correct side, i.e. the Eastern side, was not an objection that could be accepted because when the local commissioner had agreed to demarcate the suit property from that side, the petitioner, i.e. the plaintiff in the suit, did not accept that.

Other than that, it has been stated in the order that in any case if the

objections were to be filed by either party, they could only be considered after the cross-examination, if any, of the local commissioner.

It is not disputed by learned counsel on both sides that in fact the evidence of the parties has been closed and therefore it would otherwise be presumed that if any cross-examination of the local commissioner was to be done by the petitioner, that would have also been concluded.

However, Mr. Sood, learned counsel for the petitioner, submits that with the petitioners' objections to the report of the local commissioner having been dismissed, the petitioner would not have been allowed to even cross-examine the local commissioner.

Having considered the matter, Rule 10 of Order 26 of the Code of Civil Procedure, 1908, may be referred to, which reads as follows:-

“10. **Procedure of Commissioner.**-(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) **Report and depositions to be evidence in suit.**- Commissioner may be examined in person - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) **Commissioner may be examined in person.**- Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.”

While interpreting the said provision, a Division Bench of this court, in **Balbir Dewan Cold Storage and General Mills v. Naveen Chander** 1989 PLJ

247, held as follows:-

“Thus, there is no provision for filing objections to such reports made by the Local Commissioners. Even otherwise, if objections are allowed to be filed to such like reports made by the Local Commissioners, then there will be no other way to find out the exact position of the site, in dispute. The inspection by the Local Commissioner is made in the presence of the parties. Therefore, the said report is to be ordinarily accepted by the Court appointing the Local Commissioner unless any inherent defect could be pointed out therein. Thus, from the provisions of Order 26 Rule 10, it is quite evident that there is no provision for inviting any objection to the report of the Local Commissioner appointed under rule 9 thereof. In case, any such objections are filed by either of the parties to draw the attention of the Court as to the inherent defect therein, the Court may consider the same and if for any reason dissatisfied with the proceedings of the Commissioner, may direct such further inquiry to be made as it shall think fit but neither of the parties is entitled to claim any issue with respect to the report. The only provisions under sub rule 2 of Rule 10 of Order 26 of the Code is to examine the Commissioners personally in open Court either by the Court itself or by any of the parties with the permission of the Court. The objection, if filed by the parties, shall be considered after the cross-examination, if any, of the Local Commissioner by the Court under Rule 10 of Order 26 of the Code and that too along with the the other evidence at the time of final hearing.”

On going through the above, the inference would otherwise seem to be that normally neither of the parties are entitled to claim any issue with respect to a local Commissioner' report; however, obviously the statutory provision existing as it is, granting a right to the parties to the suit to examine the commissioner (upon permission to do so being granted by the court), obviously it has been thereafter observed by their Lordships that the objections if any, filed by the parties, would be considered after cross-examination if any, of the local

commissioner, in terms of the said provision.

Consequently, this petition is disposed of with a direction that if the petitioner has not been given an opportunity of cross-examining the local commissioner, he would now be given an opportunity by the trial court to do so, after which the trial court would consider the evidence led by both sides including such cross-examination.

It needs to be observed here that a separate order thereafter accepting or rejecting the objections need not be passed by that court. In other words, whatever evidence is led in the form of the cross-examination of the local commissioner (if the petitioner choses to do so), shall be considered by that Court at the time of passing the judgment in the suit.

Naturally, if the trial court itself comes to the conclusion that some further inquiry is required, upon evidence of the local commissioner having been led including his cross-examination, it would pass an appropriate order as it deems fit, but with it made clear that the petitioner shall have no right to claim any issue with regard thereto at that stage, though, of course, if aggrieved his remedy in appeal would remain protected.

January 20, 2020
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.