

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

CR No.2200 of 2020 (O&M)

Reserved on: 23.11.2020

Date of Pronouncement:8.12.2020

M/s Allwin Infrastructure Limited, Panchkula

.....Petitioner

Versus

M/s MAXXUS Developers and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Himanshu Gupta, Advocate and
Ms. Shaifali Goyal, Advocate for the petitioner.

Mr. B.R. Mahajan, Senior Advocate with
Ms. Baani Chhibber Mahajan, Advocate
for the respondents.

TEJINDER SINGH DHINDSA J.

Instant revision petition filed under Article 227 of the Constitution of India, is directed against the order dated 21.08.2020 (Annexure P-1) passed by the Civil Judge (Junior Division), Derabassi, to the extent an application moved by the respondents/defendants for demarcation in a suit for injunction instituted by the petitioner/plaintiff, has been allowed.

Counsel submits that the petitioner is a company duly registered with the Registrar of Companies and engaged in construction and developing land as Residential Group Housing Colony in and around Zirakpur. Petitioner is stated to be owner as also in exclusive possession of suit land measuring 20 bighas 15 biswas, on the basis of 4 registered sale-deeds in the

Revenue Estate of Village Singhpura, Tehsil Derabassi, District SAS Nagar. Petitioner company is stated to be developing a Residential Group Housing Colony in land measuring 16 bigha 10 biswas out of the suit land under the name and style of El-SPAZIA. In the remaining land measuring 3 bighas 17 biswas a commercial unit is to be developed for which CLU from the competent authority has been granted. It is submitted that the respondents/defendants have no concern with the suit land. Respondents No.2 and 3 owned land adjacent to the petitioner land and all the respondents in collusion are attempting to encroach upon the suit land belonging to the petitioner.

It is against such brief factual backdrop that the suit for permanent injunction restraining the defendants (respondents herein) from interfering in the peaceful possession of the petitioner/plaintiff and further restraining them in any manner from encroaching upon the suit land was instituted.

Learned Senior counsel has argued that despite the fact that there is no dispute with regard to boundaries, ownership and possession of the suit land as per pleadings of both the parties and a demarcation report having already been relied upon by the respondents/defendants in the written statement, the impugned order appointing a Local Commissioner to get demarcation of the land of plaintiff and defendants cannot sustain. Further contended that application for demarcation moved by the respondents was misconceived as the same tantamounts to collecting evidence and which is impermissible under law.

Per contra learned Senior Counsel representing the respondents has raised a preliminary objection that a revision petition under Article 227 of the

Constitution of India, would not be maintainable against an order appointing Local Commissioner for purposes of demarcation. That apart it has been submitted that in terms of settled law any dispute with respect to boundaries of the land described in title documents by khasra numbers or property numbers can only be settled by demarcation of the land at the spot. Senior counsel prays for dismissal of the revision petition.

Counsel for the parties have been heard and pleadings on record have been perused.

A Division Bench of this court in ***Harvinder Kaur and Another Vs. Godha Ram and another 1979 PLJ 562*** had examined the following question:-

“Whether revision lies against an order passed under Order 26 Rule 9 of the Civil Procedure Code, refusing to appoint a Local Commissioner.”

Their Lordships had held as follows:-

“In the light of the aforesaid observation, without dilating any more on this subject, the meaning that can be given to the explanation is that an order made in the course of a suit or proceeding would be revisable only when it determines or adjudicates some right or obligation of the parties in controversy. Thus, a revision would lie against an interlocutory order only if it determines or adjudicates some right or obligation of the parties in controversy. However, even after the satisfaction of the aforesaid test the power of revision

would be exercisable by this court subject to the limitations put under sub-Section (1) and the proviso to Section 115 of the Civil Procedure Code.

Adverting to the facts of the present case, we find that the trial court has only rejected the application for the issuance of a commission on the ground that issue no.3 could be proved by producing the relevant record and that demarcation was not necessary. From these observations, it is clear that the learned Subordinate Judge did not decide any issue nor did he adjudicate for the purposes of the suit some right or obligation of the parties in controversy.”

However, in the penultimate paragraphs of the judgment it was observed as follows:-

Before parting with the judgment, it may, however, be made clear that it cannot as a general rule be laid down that in no case a revision would lie against an interlocutory order passed under any other provision of Order 26, and that it would be on the facts of each case that it will have to be found out whether the interlocutory order against which a revision is sought to be filed, has adjudicated for the purposes of the suit some right or obligation of the parties in controversy or not.”

As such it may be observed that non-maintainability of a revision

petition against an order appointing a Local Commissioner for purposes of demarcation cannot be laid down as a general rule.

Adverting to the facts of the present case both the parties are owners of adjoining land. There is no dispute with respect of land owned by the plaintiff/petitioner through different sale-deeds nor the petitioner is disputing ownership of adjoining land owned by the respondents/defendants.

Concededly an application moved by the petitioner/plaintiff under Order 39 Rule 1 & 2 CPC stands allowed and the defendants/respondents have been restrained from interfering in the possession of the plaintiff upon land measuring 20 bighas 15 biswas. Such restrained/injunction has been passed in the following terms:-

As per pleadings of both the parties, it is admitted fact that plaintiff is owner of land measuring 20 bighas 15 bisas and defendants are owners of land measuring 26 bighas 4 biswas as detailed above. It is the respective averments of both the sides that the opposite side wants to encroach upon the land of other. The photographs placed on record by plaintiff provide for the presence of flags and barbed wires but the same are not clear if they specifically provide for the boundaries of the land of plaintiff and defendants. Any boundary dispute i.e. alleged encroachments is more likely to be settled by way of demarcation of their respective land. Moreover, it is imperative in the interest of justice to appoint local commissioner in the

present case so that both the parties who are stated to be having exclusive possession of specific Khasra numbers can legally proceed for construction of project, if any, at the spot.”

It would be clear that the application under Order 39 Rule 1& 2 CPC has been allowed without adverting to any site plan or demarcation report.

Order 26 Rule 9 CPC reads in the following terms:-

“Commissions to make local investigations:- *In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.”*

There can be no quarrel with the settled proposition of law that no party can be permitted to seek assistance of the Court to collect favourable evidence. Be that as it may, in a case where parties being owners of adjoining land and plaintiff/petitioner alleging encroachment in the suit property, an application moved for demarcation of the land of the plaintiff as also defendants would certainly facilitate an effective and complete adjudication of the matter.

The same would also ensure that the order already passed granting

interim injunction is not mis-used. While appointing a Local Commissioner for purposes of demarcation the following reasoning has been adopted in the impugned order:-

“As per pleadings of both the parties, it is admitted fact that plaintiff is owner of land measuring 20 bighas 15 biswas and defendants are owners of land measuring 26 bighas 4 biswas as detailed above. It is the respective averments of both the sides that the opposite side wants to encroach upon the land of other. The photographs placed on record by plaintiff provide for the presence of flags and barbed wires but the same are not clear if they specifically provide for the boundaries of the land of plaintiff and defendants. Any boundary dispute i.e. Alleged encroachments is more likely to be settled by way of demarcation of their respective land. Moreover, it is imperative in the interest of justice to appoint local commissioner in the present case so that both the parties who are stated to be having exclusive possession of specific khasra numbers can legally proceed for construction of project, if any, at the spot.”

The aforesaid reasoning is in terms of exercise of discretion vested under Order 26 Rule 9 CPC. Reasoning adopted by the Court while passing of the impugned order is held to be cogent and valid. Demarcation of the land of the plaintiff/petitioner as also defendants/respondents herein by implying the latest technology would not cause any prejudice to either party

and would rather assist in a complete and effective adjudication of the issue.

No infirmity or perversity is found in the impugned order dated 21.08.2020 (Annexure P-1).

No intervention in the matter is called for.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

December 08, 2020

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