

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

CR-2193 of 2021 (O&M)

Date of decision: 01.10.2021

Rameshwar and another

...Petitioners

Versus

Ram Niwas and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ashok Bhardwaj, Advocate for the petitioners.

H.S. MADAAN, J. (Oral)

Rameshwar and Daya Ram, both real brothers, who are defendants in a suit for grant of permanent injunction filed by plaintiff Ram Niwas against them as well as Gram Panchayat, Village Khatkar, feeling aggrieved by order passed by the Court of Civil Judge (Jr. Divn.) Sonapat, declining their request for appointment of Local Commissioner, have approached this Court by way of filing the present revision petition, praying that the impugned order be set aside.

I have heard learned counsel for the revisionists besides going through the record and I find that the revision petition is devoid of merit. The suit for grant of permanent injunction was filed by plaintiff Ram Niwas claiming that his father used to be owner in possession of the suit land and after death of his father, he stepped into his shoes, however, defendants No.1 and 2 by misrepresenting date of death of father of plaintiff got incorporated wrong entry in the revenue record in collusion with Halqa Patwari and threatened to dispossess the plaintiff from such

land.

The plaintiff had filed a civil suit earlier which was partly decreed in his favour, however, on an appeal having been preferred by defendants, the same was allowed and the plaintiff along with other co-sharers have filed Regular Second Appeal in this Court, which is pending. Feeling threatened by the alleged attempts on the part of defendants No.1 and 2 to interfere in his possession over the suit land, the plaintiff brought the suit in question.

On getting notice, the defendants appeared and filed written statement and thereafter, moved an application under Order 26 Rule 9 read with Section 151 CPC for appointment of a Local Commissioner, which application was resisted by the plaintiff.

Vide impugned order, the trial Court had dismissed the said application. The operative part of the order in the form of para No.11 is reproduced for ready reference:-

“Keeping in view the facts of this case and the pleadings raised by both the parties, this court is of the opinion that the real controversy in this case is regarding determining the possession over the suit property. Both the parties are claiming possession over the suit property and It is a settled proposition of law that the question of possession cannot be ascertained by appointment of Local Commissioner and it is for the party to prove his case by leading cogent evidences to establish his/her possession over the suit property. Hence, the law in this regard being very clear, it is not the aim of order 26 Rule 9 CPC to assist a litigant to collect evidence. Further, the question of possession has to be adjudicated by framing of issues and leading cogent evidences in support of it, hence the present

application does not hold any force.”

The order passed is quite detailed, well reasoned and it does not suffer from any illegality or infirmity. The trial Court has rightly observed that the parties are to prove their respective versions by adducing evidence and the Court is not to help a particular side to gather evidence by way of appointment of a Local Commissioner. The parties having not led evidence so far, the prayer made by defendants for appointment of Local Commissioner was misconceived and unwarranted and was rightly declined by the trial Court.

Learned counsel for the revisionists has referred to judgments Leela Ram Vs. Omkar, 2018 (3) PLR 256, Haryana Waqf Board Vs. Shanti Sarup & Ors., 2008(8) SCC 671 and Balkar Singh VS. Gian Singh & Anr., 2016 (3) LJR 227. These judgments are not helpful to the revisionists due to different facts and circumstances including the context in which such observations were made.

The judgment Leela Ram (supra) had different facts wherein it was observed that if during pendency of the suit a subsequent event had occurred which is essential and necessary for adjudication of the suit, then application for appointment of Local Commissioner should be allowed to get the property demarcated. Here it is not a case of any subsequent event taking place during pendency of the suit and no necessity for getting the land demarcated is found to be there. Therefore, this judgment is not helpful to the case of revisionists.

Regarding second judgment Haryana Waqf Board (supra),

there dispute between the parties was with regard to encroachment of land of plaintiff by the defendants. The application for demarcation was dismissed. It was observed that dismissal of a second appeal summarily without going into the aspect of appointment of Local Commissioner was not proper. Again facts of the case were different. In this case, the dispute between the parties is certainly not with regard to encroachment and no necessity for carrying out demarcation is pleaded or is there.

Regarding third judgment Balkar Singh (supra) again as per facts of the judgment, the dispute was with regard to likelihood of a wall being demolished and it was observed that physical features required to be gathered, specially when the decree the defendants claimed to have obtained against the plaintiff has not become final, since an application for setting aside the same was pending. Here the parties are yet to adduce evidence and defendants No.1 and 2 have shown too much hurry in filing the application for appointment of a Local Commissioner, which was rightly declined by the trial Court, giving detailed reasons. No interference with that order is called for by way of acceptance of present revision petition. The same stands dismissed accordingly.

01.10.2021

sumit.k

(H.S. MADAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No