

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

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CR No.2748 of 2021 (O&M)
DATE OF DECISION : 12th NOVEMBER, 2021

Mahender Singh

.... Petitioner

Versus

Raj Pal (deceased) through his LRs and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Amit Jain, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 25.03.2021 (Annexure P-5) passed by the Civil Judge (Junior Division), Gurugram, whereby the application filed by the plaintiff/petitioner praying to demarcate suit land and report about state of affairs existing thereupon by appointing Local Commissioner; with revenue background; has been dismissed.

It is submitted by the counsel for the petitioner that the application moved by the petitioner for appointment of a competent Local Commissioner to submit a report regarding demarcation of the property; has wrongly been declined by the Court below; on twin grounds, namely, that the plaintiff had already got the land demarcated

and that the petitioner has not disclosed the said fact in the plaint, and hence, he has not come to the Court with clean hands. The counsel has further submitted that all the reasons given by the Court below; are totally irrelevant. Since, it is a suit for injunction, therefore, the demarcation report got by the petitioner privately before filing of the suit; is otherwise also not relevant for the decision of the suit. Since, the demarcation report obtained before filing of the suit was not relevant, therefore, non disclosure of the same in the plaint is also totally inconsequential. Qua the necessity of the report, the counsel for the petitioner has pointed out that the petitioner is claiming injunction qua khasra No.22/3, whereas, the respondents are owner of khasra No.22/2. Since, both these sub khasra numbers were carved out during partition; out of the same khasra No.22, therefore, the decision of the suit would, essentially, require the demarcation of the property. Moreover, the proceedings of the suit are at initial stage. Therefore, the petitioner had rightly moved the application, which has been dismissed by the Court below; without any justifiable reason.

In view of the order, which this Court intends to pass herein below, it is not considered appropriate to issue notice to the other side.

Having perused the case file and having considered the submissions made by the counsel for the petitioner, this Court finds substance in the arguments of the counsel for the petitioner. It goes without saying that any private demarcation report got by the petitioner before filing of the suit is a totally private action of the petitioner; intended for his own purpose. It may not be appropriate for the Court to rely upon the said demarcation report and to deliver a judgment on a lis

between the parties on the basis of the same. For the report to be relevant in all respects, any demarcation, upon which the Court can rely, has to be done in the presence of both the parties and in accordance with the rules. Therefore, it would have been more appropriate; had the Court allowed the application and got the fresh demarcation report by granting opportunity of participation to both the parties.

This Court also finds substance in the other argument of the counsel for the petitioner that the conclusion of the Court below; that the petitioner has not come to the Court with clean hands is not justified. Since, the report got by the petitioner before filing of the suit could not have validly been made basis for decision of the suit, therefore, it was not even incumbent upon the petitioner to, necessarily, disclose the said fact in the plaint. This was not required to be disclosed by any provision of CPC. Therefore, it cannot even be said that the petitioner had not come to the Court with clean hands.

In view of the above, the present revision petition is allowed and the order passed by the Court below; is set aside. The trial Court is directed to appoint a Local Commissioner for getting the property demarcated, in accordance with law.

12th NOVEMBER, 2021
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>