

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

Civil Revision-6138-2015 (O&M)

Reserved on October 11, 2022

Date of pronouncement : October 20, 2022

Inder Singh ...Petitioner

Vs.

Krishan ...Respondent

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vikas Mohan Gupta, Advocate
for the petitioner.

Mr. S.K. Hooda, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is to quash order dated 10.8.2015 passed by the learned Civil Judge (Junior Division), Kharkhoda vide which the application under Volume I Chapter 1 Part M of the High Court Rules and Orders filed by the petitioner-plaintiff for appointment of a Local Commissioner, was dismissed by the trial Court.

It is worth noticing that this revision petition is pending since 2015 and on 6.4.2016, the trial Court was directed not to pronounce the final judgment.

The parties are *ad idem* that the trial is not proceeding further in the suit due to interim order passed in this case and submit that a period of 07 years has already elapsed.

Brief facts of the case are that the petitioner-plaintiff filed a suit for possession regarding a plot which is situated within *Abadi Deh*

of the village Thana Kalan, Tehsil Kharkhoda, District Sonapat on the ground that he had purchased the same along with his brother vide registered sale deed dated 12.12.1978. The plot is numbered as 908. The description of the plot is given in para 1 of the plaint, as in the North, Plot No.907 of Mange Ram and Chhotu, in the South Plot No.905 of Dhanni and Jai Dayal in the East a common street and in the West plot of Kallu Ram, which is now in possession of respondent-defendant-Krishan. The petitioner has also given the area of the plot to be 40 sq. yards.

It is stated that the defendant has occupied a portion of the plot and is a tress-passer and has failed to vacate the plot, despite repeated requests made by the petitioner/plaintiff.

It is also worth noticing that the suit was instituted in the year 2009 and after the written statement was filed in which the respondent denied any unauthorised possession by stating that he has already constructed a Pucca house in June, 1977 and towards plot No.908 there is a Pucca wall which was raised when the house was constructed. It is also submitted that the petitioner-plaintiff has purchased the plot on 12.12.1978 i.e. after the construction raised by the defendant in June, 1977 and the property in possession of the vendor of the petitioner-plaintiff, was handed over to him.

During the pendency of the suit, the petitioner has filed an application for appointment of a Local Commissioner. The operative part of the application reads as under :-

“That, in order to prove the encroachment by the defendant the demarcation of plot No.908 is necessary and it would be just and necessary for the proper adjudication by this Hon'ble Court.

It is, therefore, respectfully prayed that Local Commissioner may kindly be appointed to demarcate plot No.908 with respect to its boundaries and area at the cost and expenses of the plaintiff, in the interest of justice."

The application was contested by the respondent-defendant while submitting that prior to purchase of the plot by the petitioner-plaintiff, the defendant has already constructed the house in June, 1977 and the wall of the house of the defendant towards plot No.907 was in existence when the petitioner had purchased the property and the suit, which has now been instituted, is highly belated and there is no ground for appointment of the Local Commissioner.

The trial Court vide order dated 10.8.2015 dismissed the application on the ground that a Local Commissioner cannot be appointed to elicit evidence or gather evidence for a party, especially in view of the fact that the defendant has denied any encroachment on the disputed plot, no Local Commissioner can be appointed.

Counsel for the petitioner has assailed the findings on the ground that under Volume I Chapter 1 Part M of the High Court Rules and Orders, a procedure is provided for demarcation for appointment of a Local Commissioner.

It is submitted that under Sub-Rule 4, it is provided that the Financial Commissioner has issued instructions to the Revenue Officers/ Field Kanungo, who are appointed as a Local Commissioner in the civil suit, the manner in which the demarcation is to be done.

Counsel for the petitioner has further submitted that the trial Court has failed to appreciate that it is for the petitioner to get the land demarcated by a person other than a Revenue Official and

therefore, the trial Court should have allowed the application.

Counsel for the petitioner has further submitted that the trial Court has erred in not appreciating the pleading with regard to the boundaries, the Court should have ordered an enquiry by appointing a Local Commissioner to carry out the demarcation of the property to find out whether the defendant has encroached upon the plot in dispute.

In reply, the counsel for the respondent has argued that the defendant has raised the construction in June, 1977 and the wall towards the disputed plot No.908 was constructed there and then, whereas the plaintiff has purchased the property on 12.12.1978 with knowledge about the existing possession at the spot.

Counsel for the respondent has next argued that the suit has been instituted in the year 2009 with a false averment that about one year ago the defendant has encroached upon the Northern-Western side of the plot.

Counsel for the respondent has also raised an argument that against an order passed by the trial Court declining to appoint a Local Commissioner, a revision under Article 227 of the Constitution is not maintainable against an order of refusal to appoint the Local Commissioner.

Counsel for the respondent has relied upon 2019(1) Law Herald (P&H) 646 **Ravinder Kumar Vs. Union of India**, wherein a similar view has been taken by the Court. Counsel has also relied upon 2012(5) RCR (Civil) 753, Smt **Ulfat Vs. Hardeep Singh**; 2010 (6) RCR (Civil) 37 **Rajiv Kumar Batra Vs. Kashmiri Lal Sika**; 2008 (4) RCR (Civil) 260 **Bant Singh @ Balwant Singh and another Vs. Raghubir Singh and others** and 2006(2) RCR (Civil) 445 **Sumer Chand Jain Vs. Vishnu Bhagwan Mangla**, wherein again a similar

view has been taken. Counsel for the respondent has further relied upon a judgment of this Court in 2015 (2) PLJ 349 M/s **Tatvadarsha Bandhu Pvt. Ltd. Vs. Municipal Corporation**, wherein it has been held by this Court that where an appointment of a Local Commissioner is sought for collecting evidence to substantiate and support its own cause, the application is liable to be dismissed.

In reply, counsel for the petitioner has relied upon judgment of Bombay High Court in 2004(1) CivCC 456 **Kishanlal Maniklal Rathi Vs. Dinkar Yashwant Patil**, to submit that under Order 26 Rule 9 CPC, the Court has discretion to order the local investigation when there is a boundary dispute or identity of the land.

Counsel has also relied upon judgment of this Court rendered in 2021 (1) RCR (Civil) 177 **M/s Allwin Infrastructure Limited, Panchkula Vs. MAXXUS Developers and others**, wherein it has been held that where a revision against order of appointing a Local Commissioner for demarcation is filed, the non-maintainability of the revision petition appointing of Local Commissioner cannot be laid down as a general rule.

After going through the facts and circumstances of the case, I do not find merit in this revision petition for the following reasons :-

- (a) As per the pleadings of the parties, the plaintiff has purchased the plot No.908 on 12.12.1978 and it was a vacant plot. The case of the defendant is that in June 1977, i.e. prior to purchase by the plaintiff, he had constructed his house on the adjoining plot and the wall towards Plot No.908 is existing much prior to the purchase of the said plot by the plaintiff and he had every knowledge about the dimensions of the plot when he has purchased it in the year 1978.

- (b) The suit has been instituted in 2009 alleging that the defendant has encroached upon the western side of the plot, which the plaintiff has to prove by leading cogent evidence. In view of the well settled principle of law that no party can be permitted to seek assistance of the Court to collect favourable evidence, the trial Court has rightly held that the onus to prove that the defendant has encroached upon any part of the disputed plot is on the plaintiff and he cannot seek assistance of the Court to appoint a Local Commissioner to ascertain this fact.
- (c) Even otherwise, the suit has been instituted after about 32 years and it is not the case of the plaintiff that the defendant has not raised any construction in the year 1977.
- (d) Even otherwise, in the judgment of **Ravinder Kumar Vs. Union of India and another** 2019(1) Law Herald (P&H) 646, the revision is not maintainable against an order refusing to appoint a Local Commissioner by the trial Court.

In view of the above, there is no merit in the present appeal and the same is, therefore, dismissed.

Considering the fact that the proceedings remained pending for a period of about 07 years, the trial Court is directed to dispose of the suit expeditiously, preferably within a period of 01 year.

October 20, 2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No