

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CR-244-2023 (O&M)
Date of Decision: 19.01.2023

Chhabil Dass

...Petitioner

Versus

Krishan

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jainainder Saini, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 02.09.2022 (Annexure P-1) passed by learned Civil Judge (Junior Division), Hisar, whereby in a suit for possession, the application of respondent/plaintiff for appointment of Revenue Officer as Local Commissioner for demarcation, was allowed.

2. Learned counsel for petitioner/defendant contends that learned trial Court while allowing the application filed by respondent/plaintiff failed to take into account the well settled law that a Local Commissioner cannot be appointed to gather evidence on behalf of either of the parties.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. Impugned order dated 02.09.2022 (Annexure P-1) is premised, *inter alia*, on the following reasoning:

“xxx

xxx

xxx

5. The plaintiff has filed the present suit for possession with a direction to the defendant to hand over the vacant possession of land measuring 10 Marla comprised in Khasra No. 226//28 Min (0-7) and 226//29/1 Min (0-4) falling in Khewat No. 1289, Khatoni No. 1666. It is the case of the plaintiff that he is owner of the aforesaid land and the same has been encroached upon by the defendant without having any right to do so. It is clear from the aforesaid facts that the plaintiff's suit for possession is based on the premise that the defendant has encroached upon his land. The demarcation report dated 27/05/2016, reflecting the aforesaid fact has already been opposed by the defendant on the grounds that the same was carried out behind his back. In these circumstances, this court is of the view that fresh demarcation of the disputed property comprised in Khasra No. 226//28 Min (0-7) and 226//29/1 Min (0-4) falling in Khewat No.

1289, Khatoni No. 1666 is required to be carried out to ascertain as to whether the defendant has encroached thereon or not.

6. In these circumstances, the present application for appointment of local commissioner is allowed. Halqa Kanungo, village Sadalpur, Tehsil Adampur, District, Hissar is hereby appointed as a local commission with a direction to demarcate the disputed property comprised in Khasra No. 226//28 Min (0-7) and 226//29/1 Min (0-4) falling in Khewat No. 1289, Khatoni No. 1666 and to report as to whether the defendant has encroached upon any portion of the aforesaid land. He is directed to carry out the demarcation after issuing notice to both the parties. If any party does not appear at the time of demarcation, despite service of notice then no objection as to the demarcation having been carried out behind their backs, would be entertained on their behalf. The fee of the Local Commissioner is assessed at Rs.5000/- to be paid by the plaintiff. Now to come up on 01.10.2022 for awaiting report of the Local Commissioner.”

5. It is contended that the respondent had filed the suit on the basis of an earlier demarcation report. Hence, appointment of the Local Commissioner for fresh demarcation is illegal. The contention is untenable as the earlier demarcation report has been objected to by the petitioner himself saying that it was obtained at his back. However, a perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

6. There is thus no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement.

7. Dismissed.

8. Pending civil miscellaneous applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 19, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No