

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr.No.231 (2 cases)

Case No. : CR-4892-2018 and
CR-4895-2018

Date of Decision : July 31, 2023

Sattian through its Mohtmim Ashok Kumar Petitioner
vs.

Amitabh Tiwari, Patwari and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Gopal Sharma, Advocate
for the petitioner – in both cases.

Mr. Vijay Rana, Advocate
for respondent no.2 – in both cases.

Mr. D. K. Singal, Advocate
and Mr. Rahul Garg, Advocate
for respondent no.3 – in both cases.

* * *

GURBIR SINGH, J. :

1. Vide this common order, two Civil Revision petitions i.e. **CR-4892-2018** and **CR-4895-2018** shall be disposed of as both these petitions are between the same parties.

2. **CR-4892-2018** : This is revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 03.05.2018 (Annexure P-1), passed by learned Civil Judge (Junior Division), Fatehgarh Sahib, whereby application filed by the petitioner for additional evidence in the suit has been dismissed.

3. Briefly, it is the case of the petitioner that the petitioner moved

an application to examine Shri B. K. Pathak, Draftsman, who had prepared the site plan placed on record as Ex.P-1.

4. After arguing for some time, learned counsel for the petitioner has submitted that keeping in view the fact that the site plan is already an exhibited document as Ex.P-1, he would be satisfied if objection is not raised at the time of final hearing, to the effect that site plan (Ex.P-1) cannot be read in evidence as the concerned Draftsman has not been examined.

5. Learned counsel for the respondents submit that the site plan (Ex.P-1) is already exhibited and there is no question of raising any objection as to its exhibition due to non-examining of Draftsman, at the time of final hearing of the case.

6. Heard.

7. Accordingly, the present petition is disposed of with the direction that the respondents shall not raise any objection regarding exhibited document (Ex.P-1) at the time of final hearing of the case, on the ground that the Draftsman, who prepared the same, has not been examined. However, respondents shall be at liberty to raise any other objection.

8. **CR-4895-2018** : This is revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 11.07.2018 (Annexure P-1), passed by learned Civil Judge (Junior Division), Fatehgarh Sahib, whereby application filed by the petitioner, for directing the Local Commissioner to comply with the order dated 02.11.2017, has been dismissed.

9. The brief facts of the case are that the plaintiff-petitioner filed a

suit for permanent injunction restraining the defendants-respondents from interfering in the possession of the plaintiff-petitioner over the suit property mentioned at letter 'X' of the plaint and shown by letters AFGJ in red colour in the site plan attached with the plaint, and further restraining the defendants-respondents from alienating the said portion AFGJ shown in the site plan, adjacent to the property in possession of the plaintiff-petitioner. During pendency of the suit, an application was moved for demarcation of the suit property. Vide order dated 02.11.2017, Halqa Kanungo was appointed as Local Commissioner, who gave his report as under :-

- “a. The aksh sizra of khasra no.45//6/1-7/2-149 has been prepared in different colors, which is attached as under.*
- b. From the total area of khasra no.45//6/1-7/2, area measuring (0-8) under the ownership of Nagar Council Sirhind is under possession.*
- c. The site plan attached with the case, AFGJ as per the spot and record is situated in Khasra no.45//6/1-7/2, which is under the ownership of Anita, Nima and others and this having no concern with khasra no.149 and not its part.”*

10. The petitioner moved an application for putting the case on an early date for filing objections regarding appointment of Kanungo for demarcating the suit property. The learned Civil Judge (Junior Division), Fatehgarh Sahib, vide order dated 04.04.2018, dismissed that application on the ground that the report of Local Commissioner had already been received

and therefore, the application had become infructuous. The petitioner was given liberty to take objections as per law, to the report submitted by Local Commissioner.

11. The petitioner moved an application for directing Local, Commissioner namely Kuldeep Singh – Field Kanungo to comply with the order dated 02.11.2017. After obtaining reply on the aforesaid application of the petitioner, vide order dated 11.07.2018, learned Civil Judge (Junior Division), Fatehgarh Sahib, dismissed the application. The operative part of the said order is as under :-

“I have gone through the order dated 02.11.2017 passed by the Court vide which the local commissioner was appointed and the report given by him. It is clear from the report that local commissioner has attached shazra latha regarding suit property which is in Khasra numbers and all the points as enumerated in the order have been replied para wise. Most important aspect in this case is that local commissioner has never been examined by any of the parties. So, the evidentiary value of this report can be decided only at the time of final arguments. The application is without any merits and is accordingly dismissed.”

12. Faced with the situation, liberty was granted to the petitioner to file objections, vide order dated 04.04.2018, against the report of Local Commissioner, but instead of filing the objections, the petitioner moved an application for directing Local Commissioner to comply with the order.

13. Learned counsel for the petitioner, at this stage, submits that he

wants to withdraw the instant revision petition, with liberty to file objections before the Trial Court, which may be disposed of on merits.

14. Learned counsel for the respondents submit that if objections are filed well within time, those may be disposed of in accordance with law.

15. The petitioner is directed to file objections within 15 days and in case of doing so, the learned Trial Court is directed to dispose of the same in accordance with law expeditiously.

16. With the aforesaid observations, both the Civil Revision petitions i.e. **CR-4892-2018** and **CR-4895-2018** stand disposed of.

17. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

18. Pending applications, if any, shall stand disposed of automatically along with this order.

19. A copy of this order be placed on the file of other connected matter.

July 31, 2023
monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>