

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

CR No. 9040 of 2017
Reserved on 22.11.2023
Date of decision: 22.12.2023

Ramesh Chander

...Petitioner

Versus

Kishori Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Munish Puri, Advocate for the petitioner.

Mr. S.K. Sharma, Advocate for respondents No.1 to 4.

KARAMJIT SINGH, J. (ORAL)

1. The petitioner/plaintiff being aggrieved by order dated 01.11.2017 (Annexure P-8) passed by the Court of Additional Civil Judge (Senior Division), Pathankot whereby the application moved under Order 26 Rule 9 CPC by petitioner has been dismissed in civil suit No.CS/2407/2014 titled Ramesh Chander Vs. Kishori Lal and others.

2. The brief facts of the case are that petitioner filed suit for vacant possession of land bearing Khewat No.453, Khatoni No.625, Khasra Nos.1813 (0-12), 1814 (0-03), 1815 (0-08) total measuring 1 kanal 3 marlas and described as ABEFCD in red and blue colours in the site plan attached with the plaint, after removal of malba (structure) on the basis of demarcation which was conducted prior to filing of the suit and further restraining the respondents/defendants from raising any further construction over the suit property.

3. The suit is being contested by the respondents who filed written statement taking preliminary objection that the respondents are not having their houses in Khasra Nos.1813, 1814 & 1815 and house of respondent No.1-Kishori Lal is located in Khasra No.1832 & 1820 and houses of respondents Naresh Kumar, Bal Kishan and Major Sab are situated in Khasra No.1832. On merits it was pleaded that no doubt the respondents are co-owners in Khasra No.1818, they are also co-owners in Khasra No.1820 wherein their houses are existing. It is denied that petitioner is in possession of Khasra No.1818 or that the suit property is in possession of the respondents.

4. Petitioner filed one application for appointment of local commissioner, before the settlement of issues and the same was dismissed by the trial Court vide order dated 03.08.2016. Being aggrieved, petitioner filed Civil Revision No.6728 of 2016, which was dismissed as withdrawn with liberty to the petitioner to file a fresh application seeking appointment of local commissioner after adducing evidence, vide order dated 06.10.2016 Annexure P-5. After recording of certain evidence, the petitioner in the light of aforesaid order Annexure P-5 filed an application Annexure P-7 with prayer that earlier application filed by the petitioner under Order 26 Rule 9 CPC for appointment of a revenue expert as a local commissioner to demarcate the land in question bearing Khasra Nos.1813, 1814, 1815, 1818, 1820 and 1832 as well as its surrounding Khasra numbers to determine the location of the houses of the respondents, may be disposed of. The said application was contested by the respondents. The learned trial Court dismissed the said application vide impugned order dated 01.11.2017

Annexure P-8.

5. The petitioner being aggrieved by order Annexure P-8 has filed the present revision petition.

6. I have heard the counsel for the parties.

7. The counsel for the petitioner has submitted that the respondents are having no right, title or interest in the suit property bearing Khasra Nos.1813 (0-12), 1814 (0-03), 1815 (0-08) total measuring 1 kanal 3 marlas and the respondents took forcible possession of the said property and now petitioner has filed suit seeking possession of the suit property from respondents. It has been further submitted that appointment of a revenue official as a local commissioner is necessary to get report regarding location of the houses of the respondents, who are blowing hot and cold in the same breath in their written statement. That in preliminary objection No.1 of their written statement the respondents pleaded that their houses are not situated in Khasra Nos.1813, 1814 and 1815 and rather their houses are situated in Khasra Nos.1820 and 1832. That in the same written statement, while denying the allegations made in the plaint, respondents in para no.7 on merits, pleaded that forefathers of the petitioner gave land in question to the predecessors in interest of the respondents and they raised construction of permanent nature in the said land and as such the alleged licence in favour of the respondents qua the suit land is irrevocable as per provisions of Section 60 of Easement Act. The counsel for the petitioner has further contended that thus, it could be easily made out that respondents are in illegal possession of the suit property. That in the present case, there is a need to appoint a revenue official as a local commissioner for the purpose of demarcation of the site in

question to elucidate the issue in dispute. The counsel for the petitioner has further submitted that the second application filed by the petitioner for appointment of local commissioner is maintainable in the light of order Annexure P-5 passed by this Court in CR-6728-2016. It is further contended that interest of justice demand that the present petition be allowed with a direction to the trial Court to appoint local commissioner as prayed for by the petitioner. In support of his contentions, the counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in ***Haryana Wakf Board Vs. Shanti Sarup and others 2008 (8) SCC 671*** wherein it was observed that the dismissal of the second appeal summarily by the High Court without going into the aspect of appointment of local commissioner was not proper. The High Court ought to have considered whether in view of the nature of dispute and in the facts of the present case whether the local commissioner should be appointed for the purpose of demarcation in respect of the suit land and the matter was remanded back to the High Court to decide the second appeal in the light of the observation made thereinabove. The counsel for the petitioner has also placed reliance upon decision of Andhra Pradesh High Court in ***Velaga Narayana and others Vs. Bommakanti Srinivas and others 2015 (1) Civ.CC 213*** wherein it was held that when a genuine dispute exist between the parties, the same can be completely and effectively resolved only by appointment of local commissioner to demarcate the land in question with the assistance of Asst. Director of Land Records.

8. On the other hand, the counsel for the respondents while resisting the present petition has inter alia contended that there is no illegality

or perversity in the impugned order. It has been further contended that the petitioner has based his suit upon demarcation report which he procured prior to filing of the suit. So now there is no occasion for the petitioner to seek appointment of fresh local commissioner for demarcation of the property in question. In this context, the counsel for the respondents has referred to ***Harbhajan Singh and others Vs. Gurmel Singh and others 2015 (9) RCR (Civil) 163***. It has been further contended that the local commissioner cannot be appointed for the purpose of collecting evidence and the petitioner has to stand on his own legs in order to prove his case. The counsel for the respondents has further submitted that the petitioner cannot be allowed to create evidence through appointment of local commissioner as has been held by this Court in ***Baljit Kaur Vs. Tehal Singh and others 2022 (4) RCR Civil 461***. It has been further contended that earlier also petitioner filed similar application for appointment of local commissioner and the same was dismissed by the trial Court and even the revision petition filed against the said order was also dismissed as withdrawn vide Annexure P-5. The counsel for the respondents has further argued that the present revision petition itself is not maintainable in view of the judgment passed by Division Bench of this Court in ***Malkiat Singh Vs. Narinder Singh and others 1990 (2) PLR 191***.

9. I have considered the submissions made by counsel for the parties.

10. It is settled position of law that petitioner/plaintiff has to stand on his own legs by adducing cogent, independent and reliable evidence and he could not invoke the provisions of Order 26 Rule 9 CPC to ask the Court concerned to collect, garner or generate evidence for him.

11. The coordinate Bench of this Court in M/s Allwin Infrastructure Limited, Panchkula Vs. M/s MAXXUS Developers and others 2021 (1) RCR (Civil) 177 observed as follows:-

“As such it may be observed that non maintainability of a revision petition against an order appointing a local commissioner for purposes of demarcation cannot be laid down as a general rule.”

12. While concurring with the aforesaid observation made by the coordinate Bench of this Court and further taking into consideration the fact that vide order dated 06.10.2016 Annexure P-5, this Court gave liberty to the petitioner to file a fresh application for appointment of local commissioner after adducing evidence, this Court is of the view that the revision petition filed by the petitioner is maintainable.

13. Now adverting to the facts of the present case, one thing is clear that there is no dispute between the parties regarding boundaries or identity of the suit property which is fully detailed in the plaint and is bearing specific Khasra numbers and situated within *abadi* of the village. The plea of the petitioner is that he is the owner of the suit property but the same is in illegal possession of the respondents who are having no right, title or interest in the said property. The petitioner filed application for appointment of a revenue expert as local commissioner to demarcate the suit land so as to determine the actual position of the houses constructed by the respondents in the suit property, by locating the exact Khasra numbers at the spot. It is the contention of the counsel for the petitioner that the petitioner having no other recourse but to invoke provisions of Order 26 Rule 9 CPC to substantiate the

factum of the suit property having been encroached upon by the respondents. There is no force in the argument raised by the counsel for the petitioner as the party could not be allowed to call upon the Court seeking appointment of local commissioner with further direction to said commissioner to create and gather evidence on behalf of the petitioner to establish his case. The question as to who is in possession of the site in dispute is a matter to be decided by the Court on the basis of oral and documentary evidence to be adduced by the parties. The exercise cannot be relegated to the Court Commissioner to find out as to who is in possession and who has encroached the property in question and to what extent.

14. Further, the Court can suo moto issue a commission in cases where it deems a local investigation to be requisite or proper for the purpose of elucidating any point in dispute, which is left doubtful, after evidence has been led by the parties.

15. In view of above discussion, this Court does not find any merit in the present petition and the same is accordingly dismissed. However, if even after the recording of the entire evidence, the trial Court is of the view that to elucidate certain point which is left doubtful, it could suo moto appoint local commissioner for that purpose, in the interest of justice and for proper adjudication of the dispute between the parties.

22.12.2023

YOGESH

Whether speaking/reasoned:-
Whether reportable:-

(KARAMJIT SINGH)
JUDGE

Yes/No
Yes/No