

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 1779/2019

Date of decision: 17 /02/2023

Kuldeep Singh

.....Petitioner.

Vs.

Mani Ram and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.JP Sharma, Advocate for the petitioner.

Mr. Vipul Aggarwal, Advocate for the respondents.

Nidhi Gupta, J.

Present revision petition has been filed seeking setting aside of the order dated 18.2.2019 (Annexure P-1) passed by Civil Judge (Junior Division), Hansi whereby application dated 11.2.2019, filed by the respondents/plaintiffs under Order 6 Rule 13 CPC (Annexure P-2), has been allowed. Further prayer is that the petitioner/defendant be allowed to examine Rajinder Kumar, Kanungo and to submit demarcation report in the evidence of the petitioner.

Brief facts of the case are that the respondents filed a suit for declaration to the effect that the respondents are owners-in-possession of the suit land and the title of the suit land has vested in the plaintiffs as the petitioner/defendant did not redeem the suit land within statutory period of 30 years which was mortgaged by Smt. Nathiya daughter of Ram Karan vide registered mortgage deed no.889 dated 28.6.1978 in favour of the predecessor-in-interest of the plaintiffs. The petitioner/defendant appeared and submitted his written statement in the above said civil suit and stated that he is in possession, being owner vide Sale Deed dated 20.10.1978 of land measuring 48 kanals, and that brother of the defendant had died issueless and therefore, mutation had been sanctioned on 7.12.1981 in favour of defendant who is thus owner-in-possession.

It is submitted by the learned counsel for the petitioner/defendant that during the pendency of the suit the petitioner vide application dated 16.8.2018 (Annexure P4) applied to the Tehsildar for demarcation of the suit land as during agriculture there was a rift. It is submitted by the learned counsel that vide order dated 16.8.2018 itself this application of the petitioner was allowed, and Field Kanungo, Hansi was appointed as Local Commissioner to demarcate the land as per law, on a fee of Rs.2000/-. It is submitted that thereafter, the petitioner filed his written statement dated 10.10.2018 (Annexure P-5) in the civil suit of the respondent; and it is only thereafter, that the demarcation report dated 22.10.2018 was received, and certified copy of the demarcation report was received only on 15.1.2019. Accordingly, the petitioner filed application dated 2.2.2019 (Annexure P-3) stating therein that he wanted to examine Rajinder Singh, Kanungo as witness and sought permission to deposit expenses of defendant's witness. This application was allowed by the Id. Trial Court on 2.2.2019 itself and the petitioner was permitted to deposit Rs.270/- as "diet money" as per rule, at own responsibility, vide deposit no.928.

It is thereafter, that the respondents/plaintiffs filed application under Order 6 Rule 13 CPC that the petitioner be not permitted to examine Rajinder Singh and not to accept the alleged demarcation report on file. It is this application which has been allowed vide impugned order. Hence the present revision petition.

It is submitted by learned counsel for the petitioner that the petitioner had received the demarcation report dated 22.10.2018 only after filing his written statement on 10.10.2018 and could therefore, not have mentioned either the report or witness in his written statement. It is submitted that vide order dated 2.2.2019 (Annexure P-3) the said witness had been permitted to be examined by the Id. Trial Court and even the requisite “diet money” in this respect has been deposited, and the witness had been summoned and had appeared after depositing the “diet money” and therefore, the witness and report could not be denied by the learned Court in evidence. It is submitted that therefore, the application of the respondent/plaintiff dated 11.2.2019 (Annexure P-2), not to examine the Field Kanungo or to submit his report dated 22.10.2018, has been wrongly allowed vide impugned order. It is submitted that the application for demarcation was moved before the Tehsildar on 16.8.2018 which is prior to the filing of the written statement on 10.10.2018 and therefore, the petitioner could not be denied the opportunity to examine the witness. It is further submitted that the evidence of the petitioner is going on and no prejudice would be caused to the respondent/plaintiff if the petitioner is permitted to submit demarcation report in evidence and examine Rajinder Kumar, Kanungo. In support, Id. Counsel for the petitioner relies upon judgment of this Court in “**Prithi v Balwant Singh**”, **Law Finder Doc Id # 29089**; and in “**Municipal Corporation Ludhiana and another v Kanwaljit Singh (since deceased through LRs)**”, **Law Finder Doc**

Id # 1006365 wherein it has been held that under Order 18 Rule 17 CPC if the

evidence is being led beyond the pleadings, it cannot be taken off the record, however, if the evidence is beyond permissible limits, the same can be ignored.

In response, it is submitted by the learned counsel for the respondent/plaintiff that the application of the petitioner for demarcation has been allowed by the Revenue Officer/Tehsildar. It is submitted that by way of submitting the demarcation report and examining the Field Kanungo, petitioner wanted to create evidence, which is not permissible under the law. It is further submitted that the plea regarding demarcation and/or regarding examining of Field Kanungo has not been taken in the written statement and petitioner cannot be allowed to lead evidence beyond pleadings. It is further submitted that petitioner has tried to prove the alleged demarcation report without giving any notice to the respondents and the demarcation report has been created at the back of the respondents without any notice to them and therefore, the same is not admissible in evidence.

No other argument is raised by the parties.

Heard Ld. Counsel for the parties.

Perusal of the impugned order shows that learned Civil Judge (Jr. Div.) Hansi has allowed the application of the respondents under Order 6 Rule 13 CPC on the ground that *“present demarcation is carried out during the pendency of the suit just to create evidence without giving any notice to the plaintiff, without making mention thereof in his pleadings or without putting any suggestion qua this alleged demarcation to the plaintiff during his evidence”*.

I am in concurrence with the reasons assigned by the ld. Trial Court in rejecting the evidence sought to be placed on record by the petitioner.

In my considered view, it is clear that the petitioner ought to have mentioned in the written statement filed by him before the trial court that he had applied to the Tehsildar concerned to get the demarcation of the suit property. The fact that he did not make this mention in the written statement before the Id. trial court leads to an adverse inference against him. Evidence cannot be led at the back of the parties. No doubt, the demarcation report was received after the filing of the written statement, however, the application before the Tehsildar was made prior thereto, and therefore, this fact ought to have found mention in the petitioner's written statement in order to do complete justice between the parties and in order to ensure proper opportunity and notice to the respondent. As per law, petitioner cannot be permitted to give any evidence beyond pleadings.

At the risk of repetition, it is reiterated that it does not lie in the mouth of the petitioner to say that the demarcation report was received only after filing of the written statement. The application for demarcation before the Tehsildar was made prior to filing of the written statement, and in my considered opinion, the same ought to have been mentioned in the pleadings. Clearly, in the absence of any mention whatsoever regarding any demarcation in the written statement, the petitioner cannot be allowed to lead evidence beyond the pleadings. In this regard, reliance may be placed upon judgment cited by Id. Counsel for the respondent, rendered by a Division Bench of this Court in **Jagdish Khattar v Ram Kishan and others**, Law Finder Doc Id # **75043** wherein it has been held that a party cannot be permitted to lead evidence on a plea, which is not taken.

Further, admittedly, the petitioner has not cross examined the respondent/plaintiff's witnesses regarding demarcation. Admittedly, too, the

documents/ demarcation report has been prepared during the pendency of the suit without giving any notice to the respondent. In my considered view, such a demarcation cannot be adduced as evidence. In holding thus, I draw support from another judgment cited by Id. Counsel for the respondent, passed by the Hon’ble Supreme Court in **Jai Singh v Shakuntala, Law Finder Doc Id # 5113** wherein it has been held that evidence prepared during pendency of proceedings has to be ignored from consideration.

Moreover, it is relevant that issues have already been framed in the case. It is trite on part of the petitioner to say that no prejudice will be caused to the respondent, however, in the absence of proper notice or even any suggestion regarding demarcation having been put to the respondent heretofore, is prejudicial itself.

Accordingly, in view of the discussion above, I find no infirmity in the impugned order. This Revision Petition therefore, stands dismissed.

17/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No