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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1763-2023 (O&M)

Date of decision: March 21, 2023

Kulbir Singh

....Petitioner

versus

Ram Lal

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Lal Singh Sandhu, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

At the outset, learned counsel for petitioner points out that there is typographical error in prayer clause and instead of Annexure P-4 & Annexure P-6, they be read as Annexures P-6 & Annexure P-7, respectively.

2. Ordered accordingly. Registry to carry out necessary corrections.
3. Revision petition herein is to set aside impugned order dated 27.01.2023 (Annexure P-7) passed by learned Civil Judge (Junior Division) Samana, District Patiala whereby application under Order XXVI read with Rule 9 of Code of Civil Procedure, 1908 (for short 'CPC') (Annexure P-6) filed by petitioner-defendant for appointment of Local Commissioner, was dismissed being contrary to law laid down by this Court in the case of **Kishan Dass alias Krishan Dass and others versus Bhikham Singh** reported in **2016 (3) RCR Civil 651**.

4. Learned counsel for petitioner would contend that respondent-plaintiff filed a suit for permanent injunction restraining petitioner-defendant from interfering in peaceful possession of respondent and from taking forcible possession and from raising any type of construction over land in question comprised in Khewat No.471, Khatoni No.1223, Khasra No.30//12 (8-0), 17 (5-8), 18(8-0), 19 (8-0), 22/2 (6-12), 23 (8-0), 24 (3-14), total measuring 47 Kanals 14

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Marlas to the extent of 15/954 share, i.e. 0 Kanal 15 Marla in the shape of plot measuring 45' x 90' as per jamabandi for the year 2001-02 and now as per jamabandi for the year 2011-12 of village Patran and comprised in Khewat No.532/520, Khatoni No.1298, situated within revenue estate of village Patran, Tehsil Patran, District Patiala, as per site plan. He would further contend that petitioner-defendant is owner in possession of suit property as he had purchased the same through sale deed Vasika No.408 dated 03.05.2006 and mutation No.22440 dated 24.06.2013 is already registered in his name. Petitioner-defendant had also constructed a boundary wall and also a shed and got installed electricity meter in the suit property.

4.1 Learned counsel further contends that during pendency of proceedings before learned trial Court, petitioner-defendant filed an application under Order XXVI Rule 9 read with Section 151 CPC for appointment of Local Commissioner with a direction to visit the suit property and submit a report *qua* existing position of suit property. However, vide impugned order dated 27.01.2023 (Annexure P-7), learned trial Court dismissed the aforesaid application. Hence, the instant petition.

5. Heard.

6. The reasons for dismissal of petitioner's application given in the impugned order *inter alia* are as under:-

"5. The plaintiff has filed the present case against the defendant for permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff and from taking forcible possession from the plaintiff and from raising any type of construction over the land in question. The defendant has alleged that plaintiff has filed the present suit false suit just to grab the ownership property of the defendant and the defendant is in actual and factual possession of the suit property at the spot with the existing street measuring 25. The defendant has requested to appoint some local commissioner to visit the spot and to make a report regarding actual and factual position of the property in question that the property is situated at 25' street or 30' feet. In a matter relating to investigation into the disputed question of fact, the power of appointment of Commissioner for local investigation cannot be exercised by the Court to assist the party to collect evidence where the party can collect

evidence by itself. Therefore, at this stage there is no requirement to get the Local Commissioner appointed to ascertain the actual position at the spot. No purpose would be served by appointment of local commissioner. Further, the width of street is not a fact in issue in the instant case. Moreover, the defendant has moved present application after about six years since institution of suit when the case was fixed for defendant evidence. Therefore, at this stage there is no requirement to get the Local Commissioner appointed to ascertain the actual and factual position at the spot. Hence, the application in hand stands dismissed with costs of Rs. 300/-. Case stands adjourned to 06.02.2023 for defendant evidence.”

7. Considering the nature, facts and circumstances of the case, issuance of notice to respondent-plaintiff seems unnecessary and is, therefore, dispensed with.

8. Petitioner-defendant pleads that he is owner in possession of suit property having purchased the same through sale deed Vasika No.408 dated 03.05.2006 and mutation No.22440 dated 24.06.2013 is already registered on his name. He has also constructed a boundary wall and also a shed and got installed electricity meter in the suit property with existing street of 25’. However, plaintiff-respondent claims that he is in possession of suit property with existing street of 30’. The question for determination is whether or not property in question is situated at 25’ street or 30’. In the premise, since a limited question is with regard to determination of suit property, it would be rather appropriate and of assistance to learned trial Court itself if the application is allowed by appointing a Local Commissioner under Order XXVI Rule 9 CPC. For ready reference, Order XXVI Rule 9 CPC is reproduced herein below:-

“9. Commissions to make local investigations – *In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

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9. Perusal of above rule clearly reflects that for the purpose of elucidating any matter in dispute, the Court may issue a Commission to make an investigation and give a report. As already noted that there is no gain saying about settled proposition of law that under the garb of Order XXVI Rule 9 CPC, assistance of the Court should not be sought to collect any favourable evidence as onus of proof of their case lies on respective parties by adducing evidence at appropriate stage. But, in the present case, a report by the Local Commissioner would in fact help in effective adjudication of the issue and would not cause any prejudice to either side.

10. I may hasten to add that there is nothing on record to suggest that appointment of a Local Commissioner would result in creation of any evidence in favour of defendant (petitioner herein).

11. No prejudice would be caused to opposite party in case prayer of petitioner for appointment of the Local Commissioner is allowed.

12. Kanungo in-charge of area, as per territorial jurisdiction, is appointed as Local Commissioner, who is at liberty to take assistance of local police, if warranted. The Local Commissioner shall also give prior notice to both the parties about his date and time of spot visit, measure and demarcate the suit property and make a report of actual position indicating whether it is 25' street and 30' street. The proceedings of measurement shall be videographed and CD/Pen Drive of the same along with report shall be submitted before learned trial Court. Report be filed before learned trial Court as expeditiously as possible.

13. Petitioner shall bear the fee of Local Commissioner and incidental expenses including cost of the aforesaid process. A consolidated amount of Rs.7,500/- (all inclusive) shall be payable to the Local Commissioner in advance. Learned trial Court shall issue notice to the Local Commissioner accordingly.

14. Petition is allowed accordingly.

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15. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 21, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No