

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2381-2019 (O&M)
Date of decision: 19.04.2023

SHYAM BIHARI MISHRA AND ANOTHER ...Petitioners
VS
SARASWATI ...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Shiv Kumar, Advocate,
For the petitioners.

Mr. Deepinder Singh, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 28.02.2019 (Annexure P-11) passed by Learned Civil Judge (Junior Division), Faridabad whereby application filed by respondent/plaintiff for appointment of Local Commissioner, for ascertaining the location of the defendants' house-Whether the same is situated in Killa No.14/2 or Killa No.14/1, was allowed.

2. Learned counsel for petitioners submits that respondent/plaintiff filed suit for possession to the effect that she had purchased the plot measuring 100 square yards described as plot No.71. He submits that respondent/plaintiff initially filed an application for appointment of Local Commissioner for demarcation of suit land, which was allowed vide order dated 02.03.2016 and *Halqa* Patwari was appointed as Local Commissioner but on 01.09.2016, when the said Local Commissioner appeared in Court, learned counsel for respondent/plaintiff made a request to discharge the said Local Commissioner. Learned Trial Court acceded to the

request and discharged the Local Commissioner and proceeded further. He further submits that once the Local Commissioner, earlier appointed, was discharged by learned Trial Court, then there was no occasion for learned trial Court to appoint Local Commissioner again vide impugned order. Learned trial Court is collecting evidence for respondent/plaintiff, which is not permissible under the law, contends the learned counsel.

3. On being asked to argue, learned counsel for the respondent states that any appropriate order may be passed.

4. After hearing learned counsel for the parties, it appears that respondent has no serious objection to the revision petition being allowed or any order being passed either way.

5. In the premise, I see no reason as to why revision petition be not allowed and more particularly in the teeth of an earlier order dated 15.11.2018 (Annexure P-6) passed by a Coordinate Bench of this Court in Civil Revision No.1606 of 2017, when similar prayers were rejected vide detailed order, which, for ready reference, is reproduced herein below:

“Petitioner has preferred this revision petition against the order dated 22.02.2017 passed by the Civil Judge (Jr. Divn.) Faridabad, whereby application for appointment of Local Commissioner for demarcation of the plot/suit land through an expert by using Total Station Machine was dismissed.

Perusal of the application dated 30.01.2017 would show that twin prayers were made therein. First prayer was in respect of demarcation report already prepared by an Expert with the use of Total Station Machine. Petitioner sought to produce the same in her evidence and also to cross-examine the expert witness after closure of evidence in affirmative.

The second prayer was in respect of fresh appointment of Local Commissioner by use of Total Station Machine for demarcation of the plot/suit land.

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

In my considered opinion, the Court is not supposed to collect evidence for the parties.

The second prayer for the appointment of Local Commissioner in the form of Expert for the purposes of conducting demarcation by the use of Total Station Machine is not permissible at this stage. However, in respect of first prayer, the petitioner would be entitled to take recourse to law by summoning the person, who had conducted the demarcation and prepared the report by using Total Station Machine in accordance with law. In the event of filing any such application, the trial Court would see feasibility of granting such prayer. If the prayer is found to be worth acceptance then the report of such witness would be subject to legal criticism on cross-examination of the Expert.

In view of above, without commenting upon merits of this case at this stage, this petition is disposed of. However, the petitioner may file any such application before the trial Court and in the event of doing so, the said application shall be decided in accordance with law.”

6. In view of the aforesaid, impugned order cannot be sustained and same is set aside. Accordingly, revision petition is allowed.

(ARUN MONGA)
JUDGE

19.04.2023
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No