

205

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

CR-1733-2022

Date of Decision:- 18.10.2023

DALJIT SINGH

...Petitioner

Vs.

DHARMINDER SINGH AND ORS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Jasmeet Singh Saini, Advocate for Mr. Ashish Bansal,
Advocate for the petitioner.

Mr. Vinod Pundir, Advocate for Mr. Ritesh Pandey, Advocate
for the respondents.

AMARJOT BHATTI, J. (Oral)

1. The petitioner – Daljit Singh has filed civil revision petition under Article 227 of the Constitution of India with a prayer to set aside the impugned order dated 07.04.2022, Annexure P-6, passed by learned Civil Judge (Jr. Divn.), Baba Bakala Sahib vide which the application for appointment of Local Commissioner filed by the respondent Nos.1 and 2/defendant Nos.1 and 2 has been allowed illegally and arbitrarily.

2. Learned counsel for the petitioner argued that he had filed suit for permanent injunction restraining the respondents/defendants, their agent, etc. from interfering into the possession of the plaintiff or dispossessing him illegally and forcibly from the shop measuring 1 Marla 8 Sarsai bearing Khasra No.221 situated in village Rayya, Tehsil Baba Bakala Sahib, District Amritsar as per jamabandi for the year 2016-17. The

copy of the plaint is Annexure P-1 and copy of jamabandi for the year 2016-17 is Annexure P-2. Notice of this suit was given to the defendants. The defendants filed their written statement along with their counter claim which is Annexure P-3. The defendants have also taken their specific stand claiming their title on the basis of 3 sale deeds as detailed in the written statement regarding the property allegedly situated in khasra No.221 and 220. Along with the written statement, they also filed counter claim for permanent injunction restraining the plaintiff and his associates from dispossessing them from the property measuring 5 Marla 3 Sarsai consisting of basement, two shops, one office and other portion of Khasra No.220 and khasra No.221 as detailed in the counter claim with the boundaries as detailed therein. It is pointed out that counsel for the respondents No.1 and 2/defendants Nos.1 and 2 filed application for appointment of Local Commissioner with the prayer that the Revenue Officer be appointed as Local Commissioner to report regarding the status of the suit property. The said application was contested by the petitioner/plaintiff. The copy of application is Annexure P-4 and reply is Annexure P-5. However, the learned trial Court by passing the impugned order dated 07.04.2022 allowed the application and appointed Kanungo, Baba Bakala Sahib as Local Commissioner to visit the spot and to prepare a report regarding actual and factual position of the suit property without mentioning the possession of any party. It is argued that the Local Commissioner cannot be appointed to collect the evidence. It was for the parties to lead their own evidence to prove their case. To support these arguments, the learned counsel for the petitioner has relied upon the authorities of Coordinate Bench cited in **2013 (15) RCR (Civil) 464**

Punjab and Haryana High Court case titled as Jagmohan Vs. Ramesh Kumar @ Ramesh Chander and another and relevant para No.6 of the judgment reads as under:-

“It is settled principle of law that he, who alleges must prove initially that such and such things are in existence. This is not the duty of the Court that it should appoint Local Commissioner and then identify which part has been encroached upon. The courts are not to help the plaintiff or the defendant for collecting evidence available for that purpose. It is duty of the parties to lead substantive evidence in that regard. However, when there is dispute regarding certain evidence and existence of some facts, only then court can appoint Local Commissioner. Here is a case where the petitioner wants that evidence should be collected for him by the court by appointing Local Commissioner, which cannot be allowed.”

The learned counsel for the petitioner has also relied upon the other authority on this point of Coordinate Bench cited in **2017 (3) RCR (Civil) 167 case titled as Prem Chand Vs. Randhir Singh** where again it was clarified that ‘object of legal investigation is not to collect evidence on behalf of either parties but the purpose is to obtain such evidence, which from its peculiar nature, can only be elucidated by appointing Local Commissioner.’ Learned counsel prays that the impugned order dated 07.04.2022 passed by learned Civil Judge (Jr. Divn.), Baba Bakala Sahib may be set aside.

3. On the other hand, learned counsel for the respondents pointed out that the impugned order dated 07.04.2022 passed by learned Civil Judge (Jr. Divn.) Baba Bakala Sahib does not require any

interference. In the order itself it is made clear that the Local Commissioner will report only regarding actual and factual position of the land and he will not give any report regarding the possession of any of the parties. It is pointed out that the report of Local Commissioner is necessary for proper adjudication of the matter in controversy. There is no illegality or irregularity committed by the trial Court by passing the aforesaid order. The Civil Revision preferred by the revisionist/plaintiff is without merits.

4. I have considered the arguments and have gone through the record carefully. The pleadings of the parties are on the record. The copy of plaint is Annexure P-1 according to which Daljit Singh the present petitioner has filed simple suit for permanent injunction restraining the defendants from interfering in his peaceful possession over the shop measuring 1 Marla 8 Sarsai with specific boundaries situated in Khasra No.221, village Rayya, Tehsil Baba Bakala, District Amritsar. The plaintiff has based his claim on the basis of one sale deed dated 21.10.2021 executed by Ranjit Singh. It is claimed that the plaintiff continued in possession of the shop in question since the date of purchase. The suit is contested by the defendants. The defendant Nos.1 and 2 also filed their written statement denying the claim of the plaintiff regarding title as well as possession over any part of the suit property. The defendants have also based their claim on the basis of three different sale deeds which are mentioned in preliminary objection para No.7 of the written statement. Along with this written statement, he has also filed counter claim that the plaintiff be restrained from interfering in their peaceful possession or dispossessing them from property measuring 5 Marla 3 Sarsai as detailed in the counter claim. Considering the pleadings of the parties, both the

plaintiff as well as the contesting defendants have to prove their case by leading evidence. From the pleadings of the parties, it is nowhere claimed that either plaintiff or the defendants have encroached upon each other's areas. The petitioner/plaintiff can lead his own evidence regarding his title and possession by way of oral and documentary evidence. Similarly, the contesting defendants will also lead their independent evidence to establish their stand as detailed in the written statement as well as in the counter claim. Considering the facts of the present case, no purpose would be served by appointing Revenue Officer/Kanungo for visiting the spot or preparing his report regarding actual and factual position. In-fact both the parties have not lead their own evidence to prove their respective claims, which will be adjudicated upon by the trial Court on the basis of evidence led before the Court.

Under these circumstances, the impugned order dated 07.04.2022 passed by learned Civil Judge (Jr. Divn.), Baba Bakala Sahib appointing Kanungo as Local Commissioner for visiting the spot is not justified and the same is accordingly set aside by accepting the present revision.

Pending application (s), if any, also stands disposed of.

18.10.2023

snd

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No