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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2463-2023 (O&M)

Date of decision: April 25, 2023

Paramjit Sidhu

....Petitioner

versus

Inderpreet Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Bhupinder Banga, Advocate for petitioner.

ARUN MONGA, J. (ORAL)**CM-7201-CII-2023**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Petition herein *inter alia* is for setting aside impugned order dated 04.03.2023 passed by learned Additional Civil Judge (Senior Division), Hoshiarpur whereby application under Order XXVI Rule 9 of Code of Civil Procedure, 1908 (for short 'CPC') filed by plaintiff-respondent No.1 for appointment of local commissioner, was allowed. Further sought setting aside of impugned order dated 12.04.2023 passed by learned Additional Civil Judge (Senior Division), Hoshiarpur whereby review application filed against aforesaid order dated 04.03.2023, was also dismissed.

2. The revision petition is premised on the averments that respondent No.1-plaintiff filed suit for permanent injunction restraining defendants from raising any construction in the area of his ownership. During pendency of suit, respondent No.1-plaintiff also filed an application (Annexure P-1) under Order XXVI Rule 9 read with Section 151 of CPC for appointment of local commissioner. Vide impugned order dated 04.03.2023, learned Court below allowed the aforesaid application for appointment of local commissioner.

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2.1. Learned counsel for petitioner would contend that impugned order has been passed without considering the aspect that without filing suit for partition, respondent No.1-plaintiff filed suit for permanent injunction in respect of the unpartitioned land against co-sharers and yet, learned Court below allowed his application seeking appointment of local commissioner. He would further contend that petitioner, being an NRI, did not inform his counsel on time that earlier also demarcation was done. Therefore, after obtaining copy of demarcation, an application for review of aforesaid order dated 04.03.2023 along with prayer to stay proceedings of Local Commission till final disposal of application for review, was filed. Learned Additional Civil Judge (Senior Division), Hoshiarpur vide impugned order dated 12.04.2023 dismissed the said review application without considering the fact of earlier demarcation.

3. I have heard learned counsel for petitioner and perused the case file.

4. Impugned order dated 04.03.2023 passed by learned Additional Civil Judge (Senior Division), Hoshiarpur, is premised, *inter alia*, on the following reasoning:

“3. Having heard Ld. Counsels for both the parties and having perused the pleadings of the parties on record, this court is of the view that plaintiff has filed the present suit for permanent injunction for restraining the defendants from raising any further construction in the area shown in letters ADEF in the site plan attached with the plaint. Similarly, the defendant No.1 also filed the civil suit for permanent injunction restraining the defendants from interfering into the peaceful and legal possession of Paramjit Sidhu. In both the suits, the main dispute between the parties is only regarding the identification of property and the said dispute can be resolved by demarcation of suit property. Thus, for the complete and effective adjudication of the matter in dispute between the parties, the appointment of the revenue expert is necessary. Appointment of Local Commissioner in such a case does not amount to creation of evidence. As per order 26 Rule 9 CPC 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, the court may issue a commission to such person as it things fit directing him to make such investigation and to report thereon to the court. In the instance case also, the dispute between the parties could be resolved by way of appointment of Local Commissioner. So, accordingly Sadar Kanungo is hereby appointed as Local Commissioner and his fee is assessed at

Rs.3000/-, which is to be paid by the plaintiff/applicant. Local Commissioner is further directed to visit the spot after giving prior notice to both the parties and demarcate the suit property alongwith the property of defendants.

Now to come up on 29.3.2023 for awaiting report of Local Commissioner.”

5. Relevant extract of another impugned order dated 12.04.2023, dismissing the review application filed by defendant/petitioner herein, for ready reference, is reproduced herein below:

“Having detailed the scope of a review application, Hon'ble Supreme Court was pleased to enumerate the summary of principles, which ought to be guiding light when dealing with a review application. It has been held that, “The following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable;

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted in Chhajju Ram VS. Neki, AIR 1922 PC 112 and approved by this court in Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius & Others (1955) 1 SCR 520, to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India Vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275.

(B) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor Mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error; manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error, which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court; it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable, when the same relief sought at the time of arguing the main matter had been negatived.

Hence, as is apparently clear, the observations of the Hon'ble Supreme Court of India leave little room for doubt about the scope of review application, of the type which has been moved by the present

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applicant. Only because the Revenue Authorities had conducted demarcation of the property in the year 2019, in itself does not create a bar for this court to get the property demarcated vide order of the court. The case of the applicant does not fall within the ambit and scope of the Review application. Accordingly, finding no merits in the application in hand, consequently the same is declined.

Now, to come up on 11.5.2023 for awaiting report of Local Commissioner.”

6. Perusal of aforesaid impugned orders reveals that respondent No.1-plaintiff has filed suit for permanent injunction for restraining defendants from raising any further constructions on the suit land. Similarly, petitioner-defendant No.1 also filed civil suit for permanent injunction restraining defendants from interfering into his peaceful and legal possession. In both the suits, main dispute between the parties is regarding identification of property. Therefore, learned Court below ordered appointment of local commissioner to visit the spot after giving prior notice to both the parties and demarcate suit property along with property of defendants. Review application was also rightly dismissed by learned First Appellate Court by giving cogent and convincing reasons.

6.1. In the premise, since a limited question is with regard to determination of suit property, appointment of local commissioner would be rather appropriate and of assistance to learned trial Court itself. 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.”

6.2. 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 gainsaying about settled proposition of law that under the garb of Order XXVI Rule 9 CPC, assistance of the Court should

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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.

7. 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 plaintiff.

8. No prejudice would be caused to opposite party by appointment of the Local Commissioner, as has been rightly done by learned Court below.

9. Having heard the arguments of learned counsel for the petitioner, there is no room for interference in the aforesaid valid reasons recorded by learned Court below.

10. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

11. Needless to say that petitioner will have a right to file objection *qua* report to be filed by the Local Commissioner including dispute with regard to construction being carried out *qua* which there are rival contentions of both parties. In the premise, it is all the appropriate imperative that learned trial Court seeks report with regard to alleged construction. No fault can be found with the approach of learned Court below. Dismissed.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 25, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No