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

C.R NO. 4284 OF 2019 (O&M)

DATE OF DECISION: 29.05.2023

Kishan Chand**...Petitioner****Versus****Gurnam Singh and others****...Respondents****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Naveen Batra, Advocate,
For the petitioner.

Mr. M. L. Saini, Advocate,
For respondents No.1 to 4.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside order dated 23.05.2019 (Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Sri Anandpur Sahib, District Rupnagar, whereby the discarded report of Local Commissioner, was wrongly accepted.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner and pro forma respondents No.5 to 7 (plaintiffs) filed a civil suit for permanent injunction restraining defendants/ respondents No.1 to 4 herein from interfering in their peaceful possession over land measuring 8 Kanals 7 Marlas, situated at Village Bikapur, Tehsil Anandpur Sahib, District Rupnagar.

2.2. During pendency of civil suit, defendants moved an application for appointment of Local Commissioner in order to

demarcate the land, though the application was objected to by petitioner/plaintiff but in order to decide the matter, plaintiffs gave consent to the effect that they have no objection if the Local Commissioner is appointed and on the consent given by petitioner, learned Trial Court allowed the application vide its order dated 17.05.2016 (Annexure P-5).

2.3. Local Commissioner conducted demarcation but not per the directions issued by learned Court below. Therefore, plaintiffs filed objections (Annexure P-6) to the report of Local Commissioner pointing out that rules have not been followed, no videography has been done and even no pucca points have been established before the demarcation.

2.4. Learned Court below after considering the objections, rightly observed and discarded the report vide its order dated 06.03.2019 (Annexure P-7) and directed the Local Commissioner to conduct the demarcation again with the help of navigation system, but wrongly observed in para 5 that the expenditure will be borne by plaintiffs.

2.5. Meanwhile, Tehsildar submitted the report with the observations that demarcation could not be conducted as the navigation system was not arranged and learned Trial Court vide impugned order dated 23.05.2019 (Annexure P-8) accepted the earlier report without looking into the fact that the Court itself observed that the said report is not in accordance with law.

3. Learned counsel for petitioner would argue that learned Trial Court failed to appreciate that the application for appointment of

Local Commissioner was made by defendants and not by plaintiffs and, therefore, it is for defendants to pay the cost of Local Commissioner as well as navigation system and not by plaintiffs. Thus, the impugned order suffers from perversity and is liable to be set aside.

4. Revision petition before this Court is essentially arising out of learned trial Court order dated 23.05.2019 (Annexure P-8), having asked Local commissioner to conduct fresh demarcation of land in question with the help of total navigation system as his earlier report was not found to be acceptable. Subsequently it transpires that without waiting for fresh demarcation report from Local Commissioner, instead a report submitted by Tehsildar which was received in the interregnum, was accepted by rejecting objections of plaintiff *qua* the same.

5. Be that as it may, in the course of hearing, learned counsel for respondents No.1 to 4/defendants submits that application for appointment of Local Commissioner was filed by respondents at the relevant time seeking demarcation report after carrying out survey on the basis of total navigation system. He further contends that he is under instructions not to press for said application and there is no need for appointment of Local Commissioner.

6. Being so, grievance of petitioner/plaintiff *qua* appointment of Local Commissioner and/or direction issued by learned trial Court to conduct fresh demarcation report is rendered otiose. It is not the case of petitioner that he wanted any demarcation as he never preferred any such application.

7. In any case, scope of appointment of Local Commissioner is more for the assistance of Court to come to a just and appropriate decision and not to collect any evidence for either of parties.

8. In the premise, I do not find any ground to interfere with the findings rendered by learned trial Court. However, since in the course of hearing, learned counsel has stated that though Local Commissioner was appointed at the instance of respondents No.1 to 4 but they do not either wish to press the application or rely on the report, it is open to petitioner/ plaintiff if he desires, to file a fresh application for appointment of Local Commissioner for further assistance of Court and same if filed, shall be decided in accordance with law.

9. Learned counsel for respondents No.1 to 4/defendants neither presses his application for appointment of Local Commissioner nor wishes to rely on report which was submitted at his instance. As a consequence, the impugned order regarding very appointment of Local Commissioner is set-aside.

10. Needless to say that in case any such application is filed by petitioner/plaintiff, learned trial Court shall decide the same in accordance with law and also direct by whom the expenses/fees of Local Commissioner shall be borne, if appointed.

11. Disposed of in the above terms.

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

MAY 29, 2023
Shalini

(ARUN MONGA)
JUDGE

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