

CR-5327 of 2023

2023:PHHC:121262

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

CR-5327 of 2023

Date of decision: 13.09.2023

Hoshiyar Singh

.....Petitioner

vs.

Ramesh Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. V.K. Pandey, Advocate,
for the petitioner.

NAMIT KUMAR, J.

1. Instant revision petition has been filed by the petitioner-judgment debtor under Article 227 of the Constitution of India challenging the order dated 23.08.2023 passed by the Court of learned Additional Civil Judge (Junior Division), Mohindergarh, in EXE No.98 of 2018 whereby application filed by the respondent-decree holder for appointment of Local Commissioner has been allowed and Halqa Girdawar, Village Khyara, has been appointed as the Local Commissioner to conduct the spot inspection.

2. Brief facts relevant for disposal of the present revision petition are that respondent-plaintiff filed a suit for permanent injunction against the petitioner-defendant to the effect that he be restrained from interfering as well as forcibly possessing the land comprised in khewat No.51 khatoni No.59, mustil and killa No.35//5/1/2 measuring 0 kanal 14 marlas as per jamabandi for the year 2006-07 situated in the revenue estate of village Khayara, which was received by him by way of partition proceedings decided on 02.07.2012. The suit of the respondent-plaintiff was decreed

by learned Civil Judge (Junior Division), Mohindergarh, vide judgment and decree dated 09.09.2016 and petitioner-defendant was permanent restrained from interfering in peaceful use and possession of the plaintiff by raising construction after taking forcible possession of the suit land except in due course of law. Against the judgment and decree dated 09.09.2016, the petitioner-defendant preferred an appeal, which has been dismissed by learned District Judge, Narnaul, vide judgment and decree dated 07.04.2017. Petitioner challenged the judgments and decrees of the Courts below before this Court by way of Regular Second Appeal, which is pending decision. On 03.08.2018 respondent filed execution petition under Order 21 Rule 32 CPC. Petitioner filed reply to the execution petition. During the pendency of execution petition, respondent filed an application for appointment of Local Commissioner for getting the spot inspection done by Halqa Girdawar, which has been allowed by Executing Court vide impugned order dated 23.08.2023.

3. Learned counsel for the petitioner contended that the Executing Court has wrongly allowed the application of the respondent for appointment of Local Commissioner as petitioner never encroached upon the suit land. He further contended that application of the respondent was not maintainable as the same was filed at the final stage of the execution proceedings. He further contended that the application was filed by the respondent only to fill up the lacunae. He further contended that the impugned order being illegal, arbitrary and unlawful is liable to be set aside.

4. I have heard learned counsel for the petitioner and perused the

record.

5. Respondent filed the application for appointment of Local Commissioner on the ground that petitioner-judgment debtor has encroached upon some portion of the suit land by constructing a wall. The said application has rightly been allowed by the Executing Court to ascertain the existing position and exact demarcations and measurements of the suit land and to effectively adjudicate the *lis* between the parties. The Local Commissioner has been appointed on the expenses to be paid by the respondent. Thus, no loss or prejudice has been caused to the petitioner rather appointment of Local Commissioner is in the interest of both the parties.

6. The impugned order passed by the Court below is well-reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

7. Finding no merit in the revision petition, the same stands dismissed.

13.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No