

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCR- 5929 of 2023(O&M)
Date of Decision: 06.10.2023

Amarjit Singh Brar & Anr.

...Petitioners

Versus

Jaskaran Singh & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Sherry K. Singla, Advocate
For the petitioners.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners/ plaintiffs against the order dated 08.08.2023 (Annexure P-6) passed by the Court of Additional Civil Judge (Sr. Divn.), Sri Muktsar Sahib whereby the application (Annexure P-4) filed by the petitioners for appointment of a Revenue official as a Local Commissioner to demarcate the land in question, has been dismissed.

2. The counsel for the petitioners, *inter alia*, contends that the petitioners have filed suit for possession of the suit land which is owned by the petitioners and is in illegal possession of the respondents and is fully detailed in the head note of the plaint. It is further submitted that the suit land is bearing *khasra* numbers and as such in order to ascertain the total area which is being encroached by the defendants, some revenue official requires to be appointed as a Local Commissioner for the purpose of demarcation of the suit land. The counsel for the petitioners also referred to the provisions of Punjab and Haryana High Court Rules and Orders Volume-

I, Chapter-1, Part-M, which provides for appointment of a Revenue official

as a Local Commissioner who is to inspect and demarcate the disputed land in presence of both the parties or their representatives and then to submit his report to the Court concerned. The counsel for the petitioner has further submitted that for the proper adjudication of subject matter in issue in the present case, the appointment of Revenue official as a Local Commissioner for demarcation of the land is required to reach the logical conclusion. That, however, the learned trial Court without noticing the provisions of aforesaid Punjab and Haryana High Court Rules and Order, Volume-I, dismissed the application of the petitioner and thus, the impugned order is bad in law and deserves to be set aside.

3. I have considered the submissions made by counsel for the petitioners.

4. The petitioners have filed the suit for possession of the land in question alleging that the same has been encroached by the respondents and that the petitioners are owners of the said land. On the other hand, in their written statement the respondents are claiming their ownership over the suit land on the basis of title and in alternative they have taken plea of ownership by way of adverse possession over the said land. Admittedly. The properties owned by both the parties are adjacent to each other. So, there is a boundary dispute between the parties with regard to their properties which are adjoining to each other. As per Volume-1, Chapter-1, Part-M of Punjab and Haryana High Court Rules and Order, the same provides for procedure to be followed in a case relating to boundary dispute.

5. Order 29 Rule 9 CPC provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of

person as it thinks fit directing him to make such investigation and to report thereon to the Court. In the instant case there is dispute with respect to encroachment upon the suit land, which could be resolved by way of demarcation of the said land by some revenue official.

6. From the perusal of the impugned order, it is evident that the aforesaid provision/ procedure provided in Punjab and Haryana High Court Rules and Orders, is not taken into consideration by the learned trial Court while passing the impugned order. So, the impugned order is not sustainable being not passed in accordance with the provisions of law as discussed above.

7. Consequently, the present revision petition is allowed, without commenting on the merits of the case and the impugned order (Annexure P-6) dated 08.08.2023 is set aside and the learned trial Court is directed to decide the application filed by the petitioners for appointment of Revenue official as a Local Commissioner, afresh, as per the aforesaid settled procedure under law, after hearing counsel for both the parties. The petitioners are directed to appear before the learned trial Court on the date already fixed in the suit.

8. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

06.10.2023

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**(KARAMJIT SINGH)
JUDGE**

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