

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

CIVIL REVISION No.51 of 2024 (O&M)
DATE OF DECISION : 08.01.2024

Dalipa (since deceased) through his legal heir SatpalPetitioner

versus

State of Punjab and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aditya Dassaur, Advocate for the petitioner

Mr. Athar Ahmed, DAG Punjab

ALKA SARIN, J. (Oral):

1. This is a petition under Article 227 of the Constitution of India challenging the order dated 21.11.2023 passed by the Additional Civil Judge (Senior Division), Sri Anandpur Sahib whereby the application filed by the plaintiff/decreed-holder/petitioner herein for appointment of a Local Commissioner to demarcate the properties comprised of Khasra No.18//2/1(0-7), 18//2/3(2-14), 18//3/1(5-18) under the judgments and decrees 06.11.2009 and 04.12.2010 and its adjoining properties including Khasra No.193 and to give actual area encroached by the defendant-respondents has been dismissed.

CR-51-2024

2. The plaintiff/decreed-holder/petitioner had filed a suit for mandatory injunction as well as permanent injunction which was decreed by the Trial Court vide judgment and decree dated 06.11.2009. Thereafter an appeal was preferred by the defendant-respondents. The First Appellate Court returned a categorical finding in para-11 which reads as under :

“11. I have considered the submissions of both the sides and have perused the record. The contention of learned counsel for the plaintiff that during the pendency of the present suit the officials of the defendants have encroached upon the land belonging to the plaintiff cannot be accepted because no documentary evidence has been placed on file to prove this version. There is only bald statement of PW Kashmiri Lal which cannot be taken to be sufficient to draw a conclusion that the officials of the defendants have encroached upon the land belonging to the plaintiff.”

3. An application Order 21 Rule 32 of the Code of Civil Procedure, 1908 for enforcement of the judgments and decrees dated 06.11.2009 and 04.12.2010 was filed in the year 2020. A reply was filed to the said application. Thereafter an application was filed for appointment of a Revenue Official as a Local Commissioner to visit the spot and demarcate the land in dispute. A reply was also filed to this application. The Executing Court vide order dated 21.11.2023 dismissed the application holding that no documentary evidence had been placed on record by the plaintiff/decreed-

holder/petitioner and further that there was a finding by the Appellate Court that as per the report of the Local Commissioner it is the plaintiff/decreeholder/petitioner who has encroached upon the land belonging to the village *phirni*. It is pertinent to note that the said judgment and decree dated 04.12.2010 was never challenged by the plaintiff/decreeholder/petitioner in appeal. Aggrieved by the order of the Executing Court dated 21.11.2023 the plaintiff/decreeholder/petitioner has filed the present revision.

4. Learned counsel for the plaintiff/decreeholder/petitioner would contend that the plaintiff/decreeholder/petitioner had no other option but to ask for the appointment of a Local Commissioner as the land belonging to Gram Panchayat needs to be demarcated.

5. *Per contra*, learned counsel for the defendant-respondents has contended that it was specifically held by the First Appellate Court that the encroachment was on the part of the plaintiff/decreeholder/petitioner.

6. Heard the learned counsel for the parties.

7. The Trial Court had decreed the suit of the plaintiff/decreeholder/petitioner vide judgment and decree dated 06.11.2009. The said judgment and decree was challenged by the defendant-respondents by way of appeal. In the appeal the First Appellate Court modified the judgment and decree passed by the Trial Court. It was observed by the First Appellate Court in the judgment and decree dated 04.12.2010 that the contention of the plaintiff that during the pendency of the suit the officials of the defendants have encroached upon the land belonging to the plaintiff could not be

accepted since no documentary evidence had been placed on the file to prove the said version and that only a bald statement of PW-Kashmiri Lal cannot be taken to be sufficient to draw a conclusion that the officials of the defendants have encroached upon the land belonging to the plaintiff. The Execution Application was filed by the plaintiff/decreed-holder/petitioner in the year 2020. Therein also the plaintiff/decreed-holder/petitioner had failed to place on record a single document to show that there has been any encroachment on the land. The Executing Court while dismissing the application vide order dated 21.11.2023 has categorically relied upon the findings of the First Appellate Court and has held that in the absence of any evidence and for the reason that no appeal was ever preferred challenging the judgment and decree dated 04.12.2010 passed by the First Appellate Court the Executing Court could not go behind the decree. The case has now been adjourned for leading of evidence by the plaintiff/decreed-holder/petitioner at his own responsibility. Learned counsel for the plaintiff/decreed-holder/petitioner has not been able to point out any illegality or irregularity in the impugned order.

8. I do not find any ground to interfere in the well-reasoned order passed by the Executing Court. The present revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.01.2024
parkash

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
