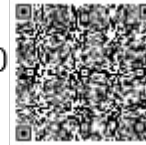


2024:PHHC:089580



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

CR-146-2024(O&M)

Date of Decision: July 11, 2024

Dalip Singh

...Petitioner

Versus

Gurmail Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.H.S.Dhandi, Advocate
for the petitioner.

Mr.Karan S. Gill, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 18.11.2023 (Annexure P-9) passed by learned trial Court, whereby, an application filed by the petitioner-plaintiff, for appointment of Local Commissioner for demarcation of land, was dismissed.

Briefly stated the facts, as emerging from the record are that initially, petitioner-plaintiff Dalip Singh had filed a suit for permanent injunction against the respondent-defendant Gurmail Singh, thereby, restraining him from encroaching and interfering into the land of plaintiff bearing Kh/kh 111/123 Khasra number 280(0-18), 281/3 (0-9-4.00), as per jamabandi for the year 2017-2018, situated within the limit of village

**CR-146-2024****-2-**

Hoshiarpur, Tehsil Kharar, District S.A.S. Nagar Mohali and not to dispossess the plaintiff from the said land.

During the pendency of the said suit, after the respondent-defendant made appearance and filed written statement, an application for appointment of Local Commissioner for demarcation of the land of the petitioner-plaintiff as stated above, was filed. Reply to the said application was filed and after hearing learned counsel for the parties, learned trial Court dismissed the said application.

However, it is culled out from the record that land of the petitioner-plaintiff as well as of the respondent-defendant, are adjoining. It is categoric claim that petitioner-plaintiff had raised the construction on his land and he had left some portion, on the back side as vacant for ventilation. Now, the respondent-defendant is raising construction and also threatened to interfere/encroach upon the land of the petitioner-plaintiff.

However, learned trial Court, in the impugned order had observed that no ground is made out for appointment of the Local Commissioner, as the same would amount to creation of evidence. The process of Court cannot be used to collect the evidence, in favour of either parties to the lis. However, the observation so made by learned trial Court, is palpably wrong.

Adverting to the facts of the case, both the parties are owners of the adjoining lands. There is no dispute about the land owned by the petitioner-plaintiff as well as, with regard to ownership of adjoining land by the respondent-defendant. Also, it is evident from the record that no



injunction was granted by learned trial Court, on the application under Order 39 Rule 1 and 2 CPC, but however, notice was issued to the respondent.

Order 26 Rule 9 CPC, reads in the following terms:-

“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.”

There can be no quarrel with the settled proposition of law that no party can be permitted to seek assistance of the Court to collect favourable evidence. Be that as it may, in a case, where parties, being owners of adjoining land and plaintiff-petitioner alleges encroachment in the suit property, an application moved for demarcation of the land of the plaintiff and defendant, would certainly facilitate an effective and complete adjudication of the matter.

Any boundary dispute i.e. alleged encroachments, is more likely to be settled, by way of demarcation of the respective lands of the parties concerned. Moreover, it is imperative in the interest of justice to appoint Local Commissioner in the present case, so that both the parties, who are stated to be having exclusive possession of specific khasra numbers, can legally proceed for raising further construction.



Thus, in the light of the aforesaid observations, the impugned order warrants interference and as such, the same is set aside. A direction is hereby given to learned trial Court to appoint Local Commissioner for demarcation of the land of the petitioner-plaintiff as well as of the respondent-defendant, by implying the latest technology, which would not cause any prejudice to either party and would rather assist in complete and effective adjudication on the issue.

In view of above terms, the present revision petition is hereby allowed.

July 11, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No