



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CR-2445-2017 (O&M)

Decided on: 09.08.2024

HARI SINGH (DECEASED) THROUGH LR

...Petitioner

Versus

RAJ KUMAR AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Mukesh Kumar Verma, Advocate
for respondent No.8

Mr. R. K. Singla, DAG, Haryana.

RITU TAGORE, J.

1. The petition, filed under Article 227 of Constitution of India, is for setting aside the order dated 22.03.2017 passed by Additional Civil Judge (Senior Division), Rewari (Annexure P-6), vide which an application filed by petitioner and proforma respondents No.13 and 14/plaintiffs for appointment of Local Commissioner to demarcate and report regarding existing construction over khasra No.244/1 (34-2) situated in Naya Gaon, Daulatpur, Tehsil and District Rewari, has been dismissed.
2. The learned counsel submits that petitioner and proforma respondents No.13 and 14/plaintiffs, filed a suit for declaration and permanent injunction (Annexure P-1), claiming their continuous possession



on a part of the suit property, bearing khewat No.546, khatoni No.689 min, khasra No.244/1 (34-2), situated in revenue estate of village Naya Gaon, Daulatpur, Tehsil and District Rewari, for long time. It is stated that late Raja Rati Ram, predecessor-in-interest of defendants No.1 to 5, reserved the suit land for the *Abadi Deh*, and thereafter other villagers, including the ancestors of the plaintiffs constructed their houses on part of the suit land, as detailed in the site plan, and have been living there with their families since then. It is asserted that respondents/defendants have consistently acknowledged the residents of village Naya Gaon as the owners in possession of the suit land, and the defendants have no legitimate interest or claim on the suit land. Furthermore, the judgment and decree dated 26.04.1974 passed in Civil Suit No.408 of 1971 titled 'Raja Rati Ram and others Vs. Hari Singh and others' is not binding upon them. The notice given by respondent/defendant No.8 and Rapat Rojnamcha No.700 dated 13.03.2011, entered in the name of respondent/defendant No.11, is invalid and not binding on the rights of the plaintiffs in the suit land.

3. Learned counsel submits that, pursuant to the notice of the Court, respondent/defendant No.8, Municipal Council, Rewari appeared and filed a written statement cum counter claim (Annexure P-8), claiming that late Raja Rati Ram had reserved and dedicated the land for construction of the school building, and vests in the Gram Panchayat. After the merger of the area of Gram Panchayat in Municipal Council Rewari, the suit land now vests in Municipal Council, Rewari.

4. It is stated by learned counsel for the petitioners that the case was posted for rebuttal evidence, when an application (Annexure P-4) was moved by petitioner and proforma respondents No.13 and 14/plaintiffs for



the appointment of a Local Commissioner, to demarcate and report on the existing position at the spot, claiming that houses of the petitioner/plaintiffs and others, already exists on the suit land. However, the respondent/defendant No.8, Municipal Council Rewari opposed the application, stating that suit land vest in Municipal Council, denying the ownership and possession of the petitioner/plaintiffs and other residents of village, and claiming their ownership and possession based on judgment and decree dated 26.04.1974, holding that suit land vests in Gram Panchayat, and said judgment and decree has attained finality.

5. Learned counsel contends that the reasons given by the learned trial Court for dismissal of the application of appointment of Local Commissioner, are unsustainable in the eyes of law as the provisions of Order 26 Rule 9 CPC do not envisage the stage of appointment local Commissioner, therefore dismissal of application by the learned trial Court, observing that it was moved belatedly is contrary to the provision of law. Given the rival claims of the parties, it is stated by the learned counsel for the petitioners, the appointment of Local Commissioner is necessary for just and complete decision of the case. Further, referring to the communications between Municipal Council, Rewari and Tehsildar, Rewari, regarding appointment of Local Commissioner, for demarcation of Khasra No 244/1, learned counsel stated that it supports the plea of the petitioner and proforma respondents No.13 and 14/plaintiffs that disputed land is required to be demarcated by the Local Commissioner for the effective adjudication of the matter in controversy. A prayer is therefore made for allowing the application for appointment of Local Commissioner by setting aside the impugned order.



6. Contrarily, learned counsel for respondent No.8/Municipal Council challenges the maintainability of the revision petition against the order refusing to appoint a Local Commissioner. In support learned counsel referred to judgments **Harchand Vs. Karambir Singh and another, CR-2752-2022, Sunil and others Vs. Suresh Kumar and others, 2017(2) R.C.R. (Civil) 882, Brij Mohan Aggarwal Vs. Ramesh Chand, CR No.1458 of 2009, Chaman Lal Vs. Sumesh Pal, CR No.457 of 2017 and Harvinder Kaur and another Vs. Godha Ram and another, 1979 AIR (Punjab and Haryana) 76.** Supporting the order, learned counsel submits that, learned trial Court has rightly dismissed the application as it was moved at belated stage to delay the proceedings of the case. Furthermore, it was not expedient in given facts, as enough evidence had already been presented by the parties. With these submissions, learned counsel made a prayer for the dismissal of the revision, lacking merits.

7. To counter the submissions, learned counsel for the petitioner submits that in **Harvinder Kaur and another Vs. Godha Ram and another, 1979 AIR (Punjab and Haryana) 76,** Division Bench of this Court observed, non-maintainability of a revision petition against an order appointing a Local Commissioner for purpose of demarcation, cannot be laid down as a general rule. Further to buttress his arguments, referred to **M/s Allwin Infrastructure Limited, Panchkula Vs. M/s MAXXUS Developers and others, 2021 (1) R.C.R.(Civil) 177, Kishan Dass @ Krishan Dass and another Vs. Bhikham Singh, 2016 (3) RCR (Civil) 651, Akal Educational Society Vs. Madan Lal, 2012 (1) Law Herald 923 and Major Singh Vs. Harbans Singh and others, CR-255 of 2016.**



8. I have heard the submissions of the learned counsel for the parties and have gone through the case file with their able assistance.

9. It is a matter of record that petitioner and proforma respondents No.13 and 14/plaintiffs, filed a suit for declaration and permanent injunction (Annexure P-1) claiming their continuous possession as owners on the part of the suit property bearing khasra No.244/1, since the time of their forefathers. Contrarily, the Municipal Council, Rewari claims their ownership and possession of the suit property and also relies on judgment and decree dated 26.04.1974. As explicitly stated in the record, the parties have already concluded their evidence. Further, the petitioners also rely upon the site plan Ex. P-29 depicting the location and existing construction on the suit land. After appraising the pleadings, evidence, and relief claimed, the learned trial Court, concluded that appointment of Local Commissioner to demarcate and report regarding existing construction over khasra No.244/1 (34-2), is not required at the fag end of the trial, when sufficient evidence is already on record.

10. No doubt, Order 29 Rule 9 CPC does not envisage the stage when an application for appointment of Local Commissioner is to be moved, yet provisions authorizes the learned Court to exercise the discretion to issue a commission when it deem expedient to have the local investigation for the purpose of elucidating any matter in dispute. The Division Bench of this Court in **Harvinder Kaur and another (supra)** has held that non-maintainability of revision petition appointing a Local Commissioner for purpose of demarcation cannot not be laid down as a general rule. In para No. 13 the Court observed as under:



“Before parting with the judgment, it may, however, be made clear that it cannot as a general rule be laid down that in no case a revision would lie against an interlocutory order passed under any other provision of Order 26, and that it would be on the facts of each case that it will have to be found out whether interlocutory order against which revision is sought to be filed has, adjudicated for the purposes of the suit some right or obligation of the parties in controversy or not.”

11. Therefore, the contention of the learned counsel for the respondent No.8/ Municipal Council that revision is not maintainable against the order refusing to appoint a Local Commissioner, is untenable. It depends on the facts of each case. In the given facts, this Court finds that learned trial Court has properly exercised the judicial discretion. Therefore, the impugned order dismissing the application for appointment of Local Commissioner for local investigation as to the existing position of the suit land, is held cogent and valid. As far as the communication between Municipal Council, Rewari and Tehsildar, Rewari for holding the demarcation of Khasra No.244/1 (34-2), is concerned, it is their independent decision. It has nothing to do with the exercise of Court's discretion, which is guided by the provisions of Order 26 Rule 9 CPC.

12. In view of the foregoing discussion, there seems no illegality in the jurisdiction exercised by the learned trial Court, warranting any interference by this Court.

13. Accordingly, this present petition is dismissed.

14. Needless to mention, the aforesaid expression is confined purely confined to the present controversy and deliberations and has no bearing on the merits of the matter pending before the Court, concerned.

15 Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

09.08.2024
Rimpal

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