

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1738-2024 (O&M)
Date of Decision:-03.04.2024

SURINDER KUMAR DECEASED THROUGH LRS AND ANOTHER
... Petitioners
Versus
HAZUR SINGH DECEASED THROUGH LRS AND OTHERS
... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Varun Sharma, Advocate
for the petitioners.

RITU TAGORE, J. (Oral)

1. Challenge in this revision petition is to order dated 27.02.2024 (Annexure P-1), passed by learned Civil Judge (Junior Division), Jalandhar in civil suit No.CS-1676-2016 titled as Surinder Kumar and Another vs. Hazur Singh & Ors., where application for demarcation of suit property bearing No.B-IX-2464(EG-104), Ladowali Road, Guru Nanak Pura, Jalandhar, has been dismissed.
2. Learned counsel submits that petitioners (plaintiffs before the learned trial court) filed a suit for declaration to the effect that they are in peaceful possession of the suit property, detailed in the plaint and conveyance deed dated 06.05.1987, issued by Tehsildar (Sales), Jalandhar and registered with Sub-Registrar, Jalandhar on 25.08.1987, in favour of respondent/defendant No.5 does not relate to the suit property and respondent/defendant No.5 has no right to alienate, sell or deal with the suit

property in any manner and sale deed dated 18.01.2000 executed by respondent/defendant No.5 in favour of respondent No.3 and sale deed dated 01.11.2010 executed by respondent No.3 in favour of respondent No.4 is illegal and void, and is not binding upon the rights of the petitioners/plaintiffs, with further prayer of restraining the respondents/defendants from interfering in their peaceful possession or dispossessing them forcibly from the suit property (Annexure P-1).

3. Learned counsel submits that it is a matter of record that upon notice respondents (defendants before the learned Trial Court) appeared and contested the suit by filing their written statement (Annexures P-3 & P-4) and petitioners filed the rejoinder, reiterating their version by denying the assertions of the respondents/defendants, and learned trial Court, put the parties to trial after framing the issues.

4. Learned counsel submits that Madho Ram was the erstwhile owner of the suit property, who constructed boundary wall around the suit property. Gurdev Ram, inherited the suit property from Madho Ram and constructed four shops and a residential house over the plot and after his death, petitioners inherited the suit property.

5. Learned counsel contends that earlier there was a canal in front of the shops, which is no longer in existence, instead there is now an open space owned by the Government. However, respondents claim their ownership on the land, having purchased the same vide conveyance deed dated 06.05.1987. It is urged by learned counsel that respondents have attempted to illegally possess the land in the month of October, 2022 and proceeded to raise an illegal construction on it by alleging that the property

bears Plot No.EG111/1. The learned counsel contends that under the garb of their claim, they intended to encroach upon the suit property, owned and possessed by petitioners.

6. The learned counsel further submitted that the petitioners filed an application (Annexure P-6) for demarcation of their property, which the respondents/ defendants resisted vide reply (Annexure P-7), claiming it was filed belatedly to fill up lacuna in their case and further that earlier application filed by the petitioners for appointment of Local Commissioner Under Order 26 Rule 9 CPC was dismissed.

7. Learned counsel submits that learned Trial Court dismissed the application arbitrarily without appreciating the fact that respondents intend to encroach upon the property of petitioners by falsely alleging that it bears No.EG-111/A, where as suit property owned by petitioners is different from the respondents. It is stated that properties can be identified and ascertained through demarcation . The learned counsel stated that learned Trial Court, however, wrongly concluded that petitioners want to fill up the lacuna in their case and delay the proceedings. Learned counsel stated that rather report of demarcation would effectively, promptly and completely resolve the issue, without causing prejudice to any one. It is submitted that demarcation report would indeed ascertain the actual and factual position prevailing at the spot. It is stated that order should be set aside and a prayer is made to direct the trial Court to reconsider the application afresh.

8. I have considered the aforesaid contentions raised by learned counsel for the petitioners and perused the record minutely.

9. From the paper-book and documents appended therewith, it is evident that the petitioners filed a suit for declaration seeking ownership and possession of the suit property as detailed in the plaint, based on conveyance deed dated 06.05.1987 registered on 25.08.1987. On the contrary, the respondents claimed ownership and possession, on the basis of the sale deed dated 08.1.2000 and also alleged that the suit property property bearing No.EGIII/A. During the proceedings of case, the petitioners filed an application (Annexure P-6) asking for the demarcation of the suit property i.e. No.B-1X-2464-A (EG-104), Ladowali Road, Guru Nanak Pura, Jalandhar. The said application was opposed by the respondents.

10. Learned Trial Court after considering the rival contentions of the parties, attending facts and circumstances, found no merit in the application and dismissed the same. The operative part of the order of the learned Trial Court is reproduced below for reference:-

“5. Perusal of file shows that present civil suit is pending since year 2016 and the present application has been filed for demarcation of suit property. Perusal of file shows that previously also vide order dated 02.05.2023, application for appointment of a local commissioner for the purpose of ascertaining the possession of the suit property has already been dismissed. The present suit is a suit for declaration to the effect that plaintiffs are in peaceful possession of property No. B9-2464 Ladowali Road, Jalandhar and further plaintiff has pleaded that the property was inherited by him from Sh. Gurdev Ram who had inherited the same from Madho Ram and Madho Ram had purchased the property and Sh. Gurdev Ram constructed 4 shops and residential property over the plot. The suit for declaration has been filed that plaintiff is in peaceful possession

of suit property and as such, plaintiff has to stand on its own legs and has to prove his case by adducing evidence in affirmative. No plausible ground has been made out for seeking demarcation at this stage when plaintiff himself is claiming himself to be in peaceful possession of suit property. Further, the counsel for plaintiff has relied upon authorities DocID#1811807, DocID#1736570, DocID#1897203, DocID#2160551, DocID#2160551, DocID#1819466, DocID#1976574, however, these are not applicable to the facts and circumstances of the case. It appears that sole purpose of filing the application is to delay the proceedings as earlier also the application for appointment of local commissioner has already been dismissed. Further, present application has been filed, when almost numerous opportunities has been availed by the plaintiff to conclude his evidence. No ground is made out to allow the application. In view of the above discussion, present application is hereby dismissed.”

11. After reviewing the impugned order in the context of the pleading of the parties, and according to the considered opinion of this Court, the learned Trial Court has rightfully exercised its jurisdiction in dismissing the application. The Court’s role is not to collect evidence for the parties; rather, it is the parties to prove their assertions by adducing cogent and affirmative evidence in this regard. The learned Trial Court has rightly noted that given the plaintiff’s specific assertion of their being in possession of suit property, there was no need to request for demarcation. Further the plaintiff’s previous application for appointment of Local Commissioner was declined, and they have already had numerous opportunity to lead their evidence. Thus, in view of the limited supervisory jurisdiction of this Court

under Article 226 of the Constitution of India, I find no ground to interfere in the judicious order passed by the learned Trial Court.

12. Keeping in view the aforesaid discussion, this Court finds no merits in the petition, the same is hereby dismissed.

13. However, any observations made hereinabove are not to be construed as opinion on the merits of the case.

14. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

03.04.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No