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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(290)

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Date of decision: - 02.08.2024

M/s Monga Picnic Resort and others

...Petitioners

Versus

Jashandeep Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ravish Bansal, Advocate
for the petitioners.

Mr. Amaninder Singh Sekhon, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.04.2022 (Annexure P-9) passed by the Civil Judge (Junior Division), Faridkot, whereby the application dated 22.01.2020 (Annexure P-7) filed by the defendant-respondent for appointment of some revenue official as Local Commissioner has been allowed.

2. Petitioners had filed a suit for permanent injunction restraining the defendant from interfering into the peaceful possession of the plaintiffs in the Marriage Palace, namely, M/s Monga Picnic Resort, Mani Singh Wala, which as per the case of the petitioner was comprised

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in Khasra Nos.467Min/4-10, 468Min/17-16 and 469in/1-14 situated at village Mani Singh Wala, Hadbast No.46 and was shown in the site plan in Green Colour and was marked as 'ABCD' and had the following boundaries.

East : Land of Gurdev Singh etc.
West : Gurpreet Singh/Reliance Petrol Pump
North : Road
South: Land of Harbans Singh

A prayer was made for restraining the defendant from demolishing the construction on any part of the said property.

3. It is the case of the petitioners that vide two registered sale deeds dated 18.09.2002 and dated 13.11.2002, they had purchased 24 kanals of land from one Gurpreet Singh, which was comprised in the khasra numbers, which had been mentioned in the headnote of the plaint. It is further the case of the petitioners that respondent No.1-Jashandeep Singh had also purchased land measuring 6 kanals 1 marla vide sale deed dated 22.11.2004 from the said Gurpreet Singh, out of Khasra No.469 with specific description and that thereafter, the defendant/respondent had further executed a lease-cum-sale deed of land measuring 4 kanals 9 marlas out of the abovesaid land. It was stated that the petitioners were the owners in possession of the land in question and the defendant had no concern with the same and was trying to forcibly dispossess them and thus, the suit for injunction was filed.

4. The defendant had filed a written statement and along with

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the written statement had also filed a counter claim for possession of the land measuring 0 kanal 15 marlas, comprised in Khasra No.469, situated at Sadiq-Faridkot Road, Village Mani Singh Wala, Tehsil and District Faridkot, Hadbast No.46 as shown in Blue Colour in the attached site plan by words "E, E1, E2, J", which as per the case of the defendant was a part of the sale deed dated 22.11.2004 in favour of the counter claimant/defendant. A prayer was also made for removal of the illegal construction raised by the plaintiffs.

5. The respondent had filed an application for the appointment of some revenue official as a Local Commissioner in the suit, to visit the spot and to demarcate the suit land and to submit his report. In the said application, it was averred that the petitioners had wrongly encroached upon the property purchased by the defendant and thus, it was necessary to verify the actual and factual position of the suit property at the spot and to demarcate the suit property and to bring the truth on the file. The said application was opposed by the petitioners and the Civil Judge (Jr. Divn.), Faridkot vide order dated 20.04.2022 allowed the said application and appointed the concerned Halqa Kanugo (assisted by Halqa Patwari in case need arises) as the Local Commissioner to visit the spot and conduct a demarcation of the suit land with regard to the actual and factual position on the spot as regards the dimensions of the property belonging to plaintiffs and defendant as mentioned in the headnote of the plaint and in the headnote of the counter claim. The Local Commissioner was further directed to demarcate the suit land and prepare a report regarding the

same in the presence of both the parties or their representative counsels and submit the report to the trial Court. While passing the said order, the trial Court took note of the plea and counter plea raised by both the parties and came to the conclusion that the main dispute between the parties was that the plaintiffs were alleging that the defendant had encroached or threatened to encroach upon his portion of land whereas the defendant was alleging that the plaintiffs had encroached upon his portion of land by making construction of his Marriage Palace and thus, to clear the position on the said aspect of encroachment, the Local Commissioner was appointed. The learned Civil Judge (Jr. Divn.), Faridkot has also considered the aspect that normally the Local Commissioner is not to be appointed to collect evidence in favour of either of the parties but in the peculiar facts and circumstances of the case, the Court had observed that the only way to lead to the truth, which was material for the just and proper decision of the case, was by appointing the revenue official for demarcation of the land. The reasons given in the impugned order are cogent and this Court finds no illegality in the same.

6. Learned counsel for the petitioners has challenged the said order by raising two arguments. The first argument raised is to the effect that the petitioners had already examined DW-2 prior to the passing of the impugned order and the said DW-2, who had prepared the site plan, had given the evidence in favour of the plaintiffs and even the defendant had also examined DW-1, who was also a Naksha Navis, although the said

DW-1 was examined after the passing of the impugned order and during the pendency of the present revision petition. It is submitted that thus, on the aspect of actual and factual position, both the parties had already submitted their evidence and it is only after the Court finds the said evidence to be not inspiring and inadequate that the Court should order the appointment of the Local Commissioner and it is, thus, submitted that the impugned order deserves to be set aside. The second argument raised by learned counsel for the petitioners is that the petitioners are in possession of Khasra No.469Min and the defendant/respondent are also claiming to be in possession of Khasra No.469 and as per the jamabandi the petitioners and respondent are co-sharer in Khasra No.469 and thus, the demarcation report would serve no purpose.

7. Learned counsel for the respondent on the other hand has opposed the present revision petition and has submitted that the order passed by the trial Court is in accordance with law and the present revision petition deserves to be dismissed. It is argued that in the present case, the primary issue between the parties is as to whether the petitioners had encroached the land of the respondent or as to whether the respondent should be restrained from entering into the land which the petitioners are alleging as their land. It was further argued that the said dispute can at best be resolved by a demarcation of the land in question to be carried out by a revenue official in the presence of both the parties and that both the witnesses who have been examined are only “Naksha Navis” and not expert revenue officials and thus, the evidence of the Local Commissioner

would help the Court in knowing the actual position at the spot.

9. This Court has heard learned counsel for the parties and has perused the paper-book and is of the opinion that the order of the trial Court is legal and in accordance with law and deserves to be upheld.

10 It could not be disputed that the primary dispute in the present case is as to whether the petitioners had encroached upon the land of the respondent or that the respondent is threatening to encroach upon the land of the petitioners. The ownership of the petitioners and the respondent is duly reflected in their respective sale deeds. Thus, a demarcation report to be submitted by a competent revenue official with regard to actual and factual position at the spot and after carrying out due demarcation of the khasra numbers which are in issue would help the Court in properly adjudicating the dispute. It could not be disputed that both the witnesses i.e., DW-1 and DW-2 are mere “Naksha Navis” and they had prepared their respective site plans not in the presence of the other parties and the said evidence can not be compared with the evidence of the revenue official, who would demarcate the property in accordance with law. Moreover, once the demarcation report has been prepared, it would be open to both the parties to raise all pleas which are available to them in law to challenge or to support the said report and thus, no prejudice will be caused to either of the parties in case the demarcation is carried out as ordered by the trial Court.

10. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order passed by the Civil Judge



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(Junior Division), Faridkot, dated 20.04.2022 (Annexure P-9) is legal and does not call for any interference and the present civil revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

August 02, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes