

CR No.7021 of 2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.7021 of 2024

Date of Decision: 03.12.2024

Kulwant Singh

..... Petitioner

Versus

Sukhdeep Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Achin Gupta, Advocate and
Mr. Karan Bansal, Advocate
for the petitioner.

VIKAS BAHL, J (ORAL)

1. This is a civil revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 08.11.2024 (Annexure P-5) passed by the Civil Judge (Sr. Divn.), Faridkot, whereby, the application filed by respondents No.1 and 2 for appointment of revenue official as Local Commissioner to visit the spot and demarcate the land in question, has been allowed.

2. Learned counsel for the petitioner has submitted that in the present case, the land in question was sold by defendant No.1 to the plaintiffs and not by the present petitioner, who is defendant No.2 in the main suit. It is submitted that defendant No.1 has been proceeded against *ex parte* and thus, the same shows that the suit is collusive. It is further submitted that the application for appointment of the revenue official to demarcate the land has been wrongly allowed as the same would result in collecting evidence for the plaintiffs and the said application has been moved at an initial stage. It is submitted that the impugned order dated 08.11.2024 be set aside and the

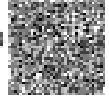
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application filed by the plaintiffs be dismissed.

3. This Court has heard learned counsel for the petitioner at length and with his able assistance has gone through the record.

4. Respondents No.1 and 2/plaintiffs had filed a suit for possession of the land measuring 3 kanals 12 marlas stated to be comprised in Khasra number 210/2(6-9), 211(8-5) situated in the revenue estate of village Ghuduwala Sub tehsil Sadiq Tehsil & District Faridkot as per Jamabandi of the year 2016-17. Further prayer for permanent injunction had also been made. It was the case of the respondents No.1 and 2 that they had purchased the land from defendant No.1 from various khasra numbers and that the said khasra numbers were in two tukks, one of which comprised of land measuring 14 kanals 14 marlas and the other tukk had comprised of land measuring 18 kanals 10 marlas. It was further the case of the plaintiffs that the possession of land measuring 18 kanals 10 marlas, as detailed in paragraph 3 of the plaint, was delivered by defendant No.1 to the plaintiffs but with respect to the land measuring 14 kanals 14 marlas, only the land measuring 11 kanals 2 marlas was handed over by defendant No.1 to the plaintiffs and that the defendant No.1 had assured the plaintiffs that he would hand over the possession of the remaining land measuring 3 kanals 12 marlas, described in the heading of the plaint, after reaping the sauna crop in the months of October and November, 2020. However, defendant No.1 did not hand over the possession of the said 3 kanals 12 marlas of land.

5. It was further averred in paragraph 7 of the plaint that the land was partitioned between defendants No.1 and 2 and the suit land came in the share of defendant No.1 but the defendants in connivance with the revenue authorities got prepared the Tartimma Shajrqqa of land as per their suitability in

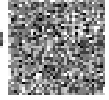
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order to defeat the case of the plaintiffs and that defendant No.2, i.e., the present petitioner was made a party so that in case, the suit land was found to be in possession of defendant No.2, then in that case, the plaintiffs were entitled to a decree against defendant No.2 also. The challenge was made to the Tartimma Shajrqā on various grounds including the ground that no measurement of boundaries of land had been described in Tartimma Shajrqā, which was mandatory.

6. The plaintiffs filed an application for appointment of the revenue official to visit the site and demarcate the land vide application dated 15.02.2024 (Annexure P-3) and in the said application, it was stated that since the Tartimma Shajrqā had been wrongly carved out by the revenue authority and no measurement of the boundaries of the land had been described in the Tartimma Shajrqā, it was not otherwise possible to demarcate the land and that the land had been partitioned between defendants No.1 and 2 and thus, the land needs to be demarcated by the revenue authority and the revenue authority is competent to demarcate the same. The said application was opposed by the petitioner.

7. Learned trial Court vide order dated 08.11.2024 while allowing the application had observed that the said report of the revenue official would help in deciding the real question in controversy between the parties and no prejudice would be caused to defendant No.2 and therefore, the Halqa Kanungo was directed to demarcate the suit property and submit his report and his fee was assessed as Rs.4,000/- which was to be paid by the plaintiffs as a conditional precedent.

8. Order 26 Rule 9 of the Code of Civil Procedure empowers the Court where it deems appropriate for local investigation to issue a commission

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to such person as it thinks fit directing him to make such investigation and to report thereon to the Court 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 etc.

9. In the present case, in view of the facts and circumstances of the case, the trial Court had exercised its powers under the above said provision while observing that the report of the revenue official showing the demarcation of the property would help the Court in deciding the real question in controversy between the parties. It has not been shown to this Court as to how demarcating the suit land would prejudice the case of defendant No.2. The argument on behalf of the petitioner that defendant No.2 has been unnecessarily made a party and he has not sold the premises in question, also deserves to be rejected, inasmuch as, in paragraph 7 of the plaint, it has been specifically stated that defendant No.2 has been made a party as in case, any part of the suit land, which as per the case of the plaintiffs is owned by them, is in possession of defendant No.2, then, a decree against defendant No.2 be also passed. Thus, the power exercised by the trial Court of appointing a revenue official in the present case is in accordance with law and does not call for any interference by this Court while exercising its revisional jurisdiction under Article 227 of the Constitution of India.

9. In light of the above, the impugned order dated 08.11.2024 (Annexure P-5) is upheld and the present petition is found to be meritless, and accordingly, the same is dismissed.

03.12.2024*D.Bansal***(VIKAS BAHL)
JUDGE**

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