



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

(130)

**CR No.703 of 2017 (O&M)
Date of Decision: 10.03.2025**

Harminder Singh and others

...Petitioners

Versus

Bhupinder Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. A.S. Gulati, Advocate for
Mr. Deepak Bhardwaj, Advocate
for the petitioners.

Ms. Dhivya Jerath, Advocate for
Mr. Navjot Singh, Advocate
for the respondents.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 11.01.2017 (Annexure P-5) passed by the Court of learned Civil Judge (Junior Division), Fatehgarh Sahib, vide which the application filed by the respondents-defendants for appointment of the Tehsildar, Fatehgarh Sahib or any other Revenue Officer as a Local Commissioner for demarcating the passage in dispute was allowed.

2. A suit for permanent injunction was filed by the petitioners-plaintiffs against the respondents-defendants restraining the respondents-defendants from interfering into the peaceful use and enjoyment of the petitioners-plaintiffs over the passage marked by letters ABCDEF marked with red color in the site plan attached to the plaint. Restraint was also sought upon the respondents/defendants from encroaching upon any portion of the passage by raising any construction or by way of putting soil on it.

The suit was opposed by way of written statement (Annexure P-2). The application for the grant of ad interim injunction moved under Order 39 Rule 1 and 2 CPC by the petitioners/plaintiffs was allowed vide order dated 10.08.2016 (Annexure P-3). Thereafter, an application was moved by the respondents/defendants for appointing the Tehsildar, Fatehgarh Sahib or any Revenue Officer as a Local Commissioner for demarcating the passage in dispute so that the soil could be put on the same with the consent of the Gram Panchayat. This application was allowed by way of the impugned order dated 11.01.2017 leading to the filing of the present revision petition.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioners submits that no consent had been obtained by the respondents/defendants from the Gram Panchayat in the absence of which, the soil could not be put on the passage. He further submits that earlier also an application (Annexure P-6) for demarcation of the passage in dispute had been moved and a report (Ex.P-6) was submitted for the same. He submits that under the circumstances, there would be no occasion to appoint a Local Commissioner again for the purpose of demarcation.

5. *Per contra*, learned counsel for the respondents/defendants submits that as regards the consent, the same had already been obtained which is clear from the application (Annexure P-4) itself. As regards the report (Ex.P-6), she submits that the report was ambiguous and the passage has nowhere been demarcated clearly. She submits that the simple request made by way of the application was to demarcate the passage so that soil could be put on the passage in dispute without violating the order passed by the trial Court in the injunction application.

6. I have considered the submissions made by learned counsel for the parties.

7. While allowing the injunction application filed by petitioners/plaintiffs, it was held that the existence of a passage was admitted. The same was stated to be in Khasra No. 840. It was further held that there was no dispute as regards the location of the passage. After examining the matter, the respondents/defendants were restrained from interfering in the use and enjoyment of the passage by the petitioners/plaintiffs and from encroaching upon the same. However, at the same time it was held that if the respondents/defendants wanted to put soil on the said passage, the order would not operate as a bar and the respondents/defendants would be permitted to put soil on the passage with the consent of the Gram Panchayat provided that the level of the passage was not raised above the property of the respondents/defendants, which may then cause a loss to the petitioners/plaintiffs:-

“5. It is however made clear that with the consent of Gram Panchayat if defendant wants to put soil on the passage in question, the instant order shall not operate as bar to the same, provided that level of the passage is not raised above the property of defendant which may cause loss to the defendant. Nothing observed hereinabove shall be construed as opinion of this Court on the merits of the case.”

8. The respondents/defendants then moved an application for appointment of the Tehsildar/Revenue Officer for demarcating the passage and noticing the directions passed by the Court in the injunction application, the same was allowed:-

“It is not in dispute that there exists a passage in Khasra No.840. While disposing stay application, this Court

had restrained the defendants from interfering in peaceful possession and enjoyment of plaintiff over the passage in question denoted by letters ABCDEF in the site plan annexed with the plaint. However, at the same time it was observed that the defendants may put soil on the passage in question with the consent of gram panchayat. It is for the purpose of putting the soil on the passage in question that plaintiff has sought appointment of Local Commissioner who will demarcate the passage. It is true that as pointed out by learned counsel for defendant it is not in dispute that the passage exists in khara No.840 but at the same time, the said khasra number/passage has to be demarcated so that if the defendants put soil in the same with the consent of gram panchayat, later on no dispute is raised by plaintiff as to location and encroachment of his own property. The authorities cited by learned counsel for respondent are distinguishable on facts. Application in hand stands allowed. Field Kanungo of Halga concerned is appointed as Local Commissioner to demarcate the passage in question, which demarcation shall be done in accordance with the instructions of Financial Commissioner after issuing notice to both the parties. His fee is assessed as Rs.2000/-, to be borne by the plaintiff. Ahlmad is directed to hand over copy of pleadings and copy of instant order to the counsel for plaintiff, who shall further hand over it to the Local Commissioner for demarcation, which shall be conducted on 21/01/2017 and report shall be submitted on 27/01/2017.

Needless to say that before proceeding to put soil on the passage, which shall be so demarcated by the Local Commissioner, the consent of the gram panchayat shall be obtained by defendant by following the due procedure and the level of passage shall not be raised above the property of the plaintiff. To come up on 27/01/2017, awaiting report of Local Commissioner.”

9. In the considered opinion of this Court, there is absolutely no illegality or jurisdictional error in the said order, for, the Court concerned has dealt with the matter from the correct perspective and it is also been stated before proceeding to put soil on the passage, the consent of Gram Panchayat would be obtained by following the due procedure.

10. As regards the report (Ex.P-6), there is no clarity as to whether the report had been submitted pursuant to the application moved by the parties and further what was the conclusion in the said report. Under the circumstances, the trial Court rightly allowed the demarcation of the passage in dispute. The same was also necessary to avoid any violation of the order passed by the Court in the injunction application. Accordingly I do not find any merit in the present revision petition and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

March 10, 2025

Rekha

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