

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6890 of 2014

Date of decision: October 09, 2014.

Ruhel Singh @ Ravel Singh

... **Petitioner**

v.

State of Punjab etc.

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri S.K. Aneja, Advocate, for the petitioner.

Dr. Bharat Bhushan Parsoon, J. (Oral):

Dismissal of application of the plaintiff, petitioner herein, for appointment of local commissioner to demarcate the suit land in order to appreciate actual location of the standing 40 eucalyptus trees by the lower court on 22.8.2014 (Annexure P-3), forms genesis of this revision petition.

The petitioner-plaintiff claiming himself to be owner in possession of land measuring 7 Kanal 10 Marlas, has claimed that 40 eucalyptus trees were planted by him in the said land and he, thus, is entitled to cut the said trees. His litigation is with the Forest Department, Punjab.

Written statement furnished by the defendants, respondents herein, reveals that they had taken specific objection against claim of the petitioner-plaintiff to the effect that without any demarcation, proper adjudication of the controversy in suit, is not possible. Specific objection taken by the respondent-defendants in their written statement is reproduced as under:-

“7. That till today no demarcation has been conducted by the

plaintiff as to the land in question in the presence of the defendants. Without conducting the demarcation at the spot, proper adjudication of the instant suit is not possible. So, the instant suit is liable to be dismissed.”

The matter here is not of determination of ownership and possession which, of course, would be adjudicated by the lower court after evaluating the evidence to be produced by the parties. At this stage, point to be determined only is about location of the trees as to whether these fall in the alleged private land of the petitioner-plaintiff or in the land of the respondent-defendants. The matter of location of trees can be adjudicated only by demarcation of the land where the trees are located. Reference may be made to Hawa Singh v. State of Haryana and others, 2004(3) RCR (Civil) 569.

Wherever the dispute is regarding location of area of suit land, demarcation by local commissioner is required. Reference in this regard may be made to Bhupendra v. Homraj, 2014(3) Civil Court Cases 652. Even the Hon'ble Supreme Court of India in Haryana Waqf Board v. Shanti Sarup and others, (2008)8 SCC 671, had specifically dealt with this aspect and had come to the conclusion that where demarcation of the suit land is required, it should be done through appointment of local commissioner. Observations of the lower court that by way of appointment of local commissioner, the court would be helping the respondent-plaintiff to create evidence, on the facts and circumstances of the case is entirely mis-founded.

No notice is being issued to the respondents in order to obviate delay as also in view of the fact that the order which this Court is going to pass in the given facts and circumstances of the case is not likely to prejudice their interests. Even otherwise, there would be no reason with the respondents to oppose appointment of a local commissioner when they have taken such defence in their written statement itself.

Consequently, setting aside the impugned order, application (Annexure P-1) of the petitioner-plaintiff for appointment of some revenue expert as local commissioner for the purpose of location of the trees and demarcation of the land is allowed. The lower court would specifically name some revenue officer fixing his remuneration to carry out the task in terms of application (Annexure P-1) and order of this Court. The local commissioner would do the given task after giving notice to Counsel for the parties.

The petition stands allowed in the above terms.

[Dr. Bharat Bhushan Parsoon]
Judge

October 09, 2014.
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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?