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**(1982) 10 P&H CK 0005**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 18 (sic) 0 of 1973

Shri Gurbachan Singh and others

APPELLANT

Vs

Shri Amrik Singh and others

RESPONDENT

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**Date of Decision :** 04-10-1982

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9

**Citation :** (1983) 2 ILR (P&H) 56

**Hon'ble Judges :** J.V. Gupta, J

**Bench :** Single Bench

**Advocate :** N.C. Jain with Sh. Arun Jain and Sh. V.K. Jain, for the Appellant; V.K. Bali, for the Respondent

**Final Decision :** Dismissed

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## Judgement

J.V. Gupta, J.—This is plaintiff's second appeal whose suit for possession of land has been dismissed by both the Courts below.

2. The plaintiff appellants filed the suit for possession of a part of land out of plot No. 13 bearing khasra No. 11176/1445 on the allegations that Mukand Singh, predecessor-in interest of the plaintiffs, purchased this plot measuring 1 Acre 7 Marlas for Rs. 366-50/-on March 11, 1956 from the Rehabilitation Department and he was delivered actual physical possession of the agricultural land on June 12, 1957. The said Mukand Singh had also associated some claimants including Labha Mal, plaintiff No. 5, whose claims were adjusted towards the payment of the piece of the sale land The adjoining plot bearing khasra No. 1446, Kothi No. A-75 was sold by the Rehabilitation Department to Gopal Singh and others, who subsequently sold the same to the defendants According to the plaintiffs, the contesting defendants are in illegal possession of a part of the land described as A B C D E in the plan attached with the plaint which is stated to be a part of plot No. 13.

3. The defendants filed their writen statement in which they denied that the suit

property is a part of plot No 13. They pleaded that Mukand Singh sold only 7 Kanals and 14 Marlas of land and not 1 Acre and 7 Marlas of land as alleged in the plaint.

4. On the pleadings of the parties, the trial Court framed the following issue: --

(1) Whether the land in dispute belongs to the plaintiffs and the defendants have encroached upon it.

(2) Relief

5. In the trial Court, for the demarcation of filed No. 11176/ 1445 a local commission had been issued which was executed by Shri Om Parkash Vaid, Tehsildar, Karnal. Against his report, objections were filed by the contesting defendants as the report was in favour of the plaintiffs. On account of these objections, the trial Court, in order to decide the validity of the report of the Local Commissioner, framed the following issues:--

(1) Whether the report of the Local Commissioner is liable to be set aside on the objections mentioned in the objection petition?

(2) Relief.

6. The trial Court ultimately accepted the objection petition filed on behalf of the defendants and did not accept the report of the Local Commissioner. On merits, it came to the conclusion that the plaintiffs have failed to prove, from the evidence on record that the land in dispute is a part of khasra No. 11176/1445 as alleged by the plaintiffs. As a result of this finding, the plaintiffs' suit was dismissed. In appeal, the learned Additional District Judge affirmed this finding of the trial Court, though on certain points the finding of the trial Court was reversed, but the same is not material for the decision of this appeal. Ultimately, the trial Court's decree dismissing the plaintiff's suit was maintained.

7. A request was made to the lower appellate Court to appoint another commission, but the lower appellate Court declined the said request with the observation that "no useful purpose will be served in remanding the case or in appointing a Local Commissioner". Dissatisfied with the same, the plaintiffs have come up in second appeal in this Court.

8. Primarily, whether the site in dispute is a part of khasra No. 11176/1445 or not, is a question of fact. Since both the Courts below have concurrently held that plaintiffs have failed to prove the site in dispute to be part of said khasra number, the learned counsel for the appellants vehemently contended that it was a fit case where another Local commissioner should have been appointed to demarcate the boundaries. According to the learned counsel, the report of the Local Commissioner, appointed by the trial Court, was in favour of the plaintiff and therefore, it was in the fitness of circumstances that, in case that report was not accepted, the trial Court should have appointed another commission or in any case, the lower appellate Court should have remanded the case or have

appointed another commission. Having failed to do so, the findings arrived at are vitiated. In support of his contention, he referred to *Pohlu Ram v. Gram Panchayat Dharamgarh alias Badowal* 1980 P.L.J. 24, *K. Ramalingam v. M.V. Ramanathan* AIR 1978 Kar 65 and *Debendranath Nandi Vs. Natha Bhuiyan*, .

9. After hearing the learned counsel for the parties, I am of the considered opinion that there is no merit in this appeal. Order XXVI Rule 9 of the CPC provides for the appointment of commission for local investigation Rule 10 of Order XXVI further provides the procedure of Commissioner Clause (3) of Rule 10 provides that:

Whether the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

10. Thus, a discretion has been given to the trial Court to direct further enquiry as it may think fit in the circumstances of a given case. It cannot be successfully argued that under this provision, the trial Court or the lower appellate Court is under any legal obligation as such to appoint another commission when it is dissatisfied with the proceedings of the commission already appointed.

11. In *Pohlu Ram's* case (supra) the point of dispute between the parties was whether by the construction in dispute the plaintiff had encroached upon the circular road of the village. This matter, according to the learned Judge could be decided only by making measurements at the spot for which purpose it was necessary to appoint a commissioner. Admittedly in that case no commissioner was appointed by the trial Court at any stage. In *K. Ramalingam's* case (supra), it was held that where a particular matter has already been the subject of investigation and a report has been submitted by a person should not ordinarily be issued unless upon valid grounds made out by the parties concerned it is found that the previous report is unreliable and therefore should be set aside. Thus in no way, these judgments support the contention of the learned counsel for the appellants. In *Debendranath Nandi's* case (supra), the learned Judge, on the facts and circumstances of that case, came to the conclusion that was a fit case which should go back to the trial Court on remand so that the Court can appoint a suitable Commissioner to enquire into the exact matter which was earlier referred to the Commissioner for local investigation by the trial Court.

12. In *Bibhuti Bhushan Bank and Another Vs. Sadhan Chandra Sheet and Others*, cited on behalf of the respondents, it has been held that the acceptance or rejection of the Commissioner's report is entirely within the Court's competence. It has full discretion in the matter but the said discretion is to be exercised properly and not capriciously. If the Court rejects a Commissioner's report after proper exercise of discretion and holds other evidence on the record as sufficient for the disposal of the case, it is not obligatory or compulsory on the Court to order another investigation.

13. Thus, from the perusal of the said authorities cited at the Bar and from the reading of the provisions of Order XXVI Rule 10 sub-clause (3), Code of Civil

Procedure, it is evident that it is the discretion of the Court to appoint another Commissioner and it is in no way obligatory to do so particularly when the Court comes to the conclusion that it will serve no purpose. In the present case, the lower appellate Court considered this request made on behalf of the appellants, but found that, in fact, no useful purpose will be served in remanding the case or in appointing a Local Commissioner.

14. As regards the merits of the case, the lower appellate Court has discussed the matter in detail and has given a firm finding, which is based on the appreciation of evidence on the record. It has been held that it is not proved that the disputed site was part of the area which was sold to the father of the plaintiffs, Mukand Singh, out of the total area of the khasra number mentioned in the plaint. It has been further observed that it might be that the area sold in favour of the father of the plaintiffs comprised of the remaining area of the khasra number other than the one in dispute.

15. Under these circumstances, I do not find any infirmity or illegality in the judgment of the lower appellate Court as to be interfered with in the second appeal. Consequently, the appeal fails and is dismissed with costs.