

(2001) 06 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6043 of 1999

Ajlaur Singh

APPELLANT

Vs

Jagtar Singh

RESPONDENT

Date of Decision: June 1, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 17A, Order 26 Rule 9, Order 39 Rule 2A

Citation: (2001) 3 CivCC 627 : (2001) 4 RCR(Civil) 292

Hon'ble Judges: Bakhshish Kaur, J

Bench: Single Bench

Advocate: Mr. Satinder Khanna, for the Appellant; Mr. S.S. Saron, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Bakhshish Kaur, J.

The plaintiff filed a suit for mandatory injunction directing the defendants to remove the underground pipeline installed in his land. The suit was contested by the defendants. The parties had led evidence in support of their respective claims. When the case was fixed for rebuttal and arguments, the plaintiff filed an application under Order 18, Rule 17-A of the CPC that he may be permitted to lead additional evidence and also Local Commissioner may be appointed to demarcate the land in dispute. The prayer on these terms was declined by the trial Court vide impugned order which has given rise to the present revision petition.

2. I have heard Mr. Satinder Khanna, learned counsel for the petitioner and Mr. S.S. Saron, learned counsel for the respondent No. 1.

3. Mr. Satinder Khanna, learned counsel for the petitioner, contended that initially a suit for permanent injunction was filed and later on during the pendency of the suit,

it was amended for mandatory injunction because the defendant had laid the underground pipes passing through the fields of the plaintiff. It is also contended that the respondent has violated the order of the status-quo ordered by the trial Court by laying the underground pipes. Thus, an application under Order 39, Rule 2-A of the Code was filed and the proceedings in that application are pending.

4. It is admitted case of the petitioner that he had filed two applications for additional evidence - one was filed in the contempt petition under Order 39, Rule 2-A of the code and the other was filed in the suit which was dismissed and the same is under challenge.

5. The impugned order has been assailed on the grounds that the learned trial Court has simply looked into the heading of the application being under Order 18, Rule 17-A of the Code, whereas, the prayer was for the appointment of the Local Commissioner who may inspect the spot and report to the Court regarding the field through which the underground pipes are passing. To support his view point that howsoever a party may be negligent in leading evidence, an opportunity should be given for leading the additional evidence and he cannot be denied the right to examine any witness on the ground that this evidence could have been produced at the time of leading affirmative evidence or when he had right to lead rebuttal evidence. In this context, he has placed reliance on *Ram Singh v. Pirthi and others* 1997(2) RCR 108 : 1997(1) CCC 667 (P&H); *Labh Kaur v. Ram Asra and another* 1999(4) RCR 527 : 2000(1) CCC 95 *Karthy v. Parukutty* 2000(1) CCC 97 (Kerala) and *Jaipur Development Authority v. Smt. Kailashwati Devi* 1997(4) RCR 97 : 1997(3) PLR 880.

6. On the appointment of Local Commissioner, Order 26, Rule 9 of the Code provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon. The trial Court, however, vide impugned order did not consider it proper to issue a commission. It also appears that this application for the appointment of Local Commissioner has been filed by the petitioner simply to strengthen his case as admittedly proceedings under Order 39, Rule 2-A of the Code are also pending before the trial Court and for that reason he wants to collect evidence through the appointment of Local Commissioner and that too at the stage when the case is already ripe for arguments.

7. In the case of *Jaipur Development Authority* (supra), the Apex Court has observed that a party can lead evidence if conditions mentioned proved to exist. Whether in the given case in hand the petitioner has been able to bring out his case within the provisions envisaged under Order 18, Rule 17-A of the Code? The answer is obvious No. His consistent stand is that the defendant- respondent had laid the underground pipeline passing through his field, therefore, he may be directed to remove the same. By no stretch of reasoning, it can be believed that laying of the

pipeline passing underground his field was not in his knowledge, or, that after the exercise of due diligence he could not produce it at the time when he was leading evidence. If at all he wanted to establish the fact that the pipeline is passing underneath his field and he wanted to pinpoint the same, he should have been vigilant enough to prove this fact earlier. It is not a case that the operation of laying down the pipes was done in his absence. Then, it could be said that he had no knowledge. If at all anything was done the same was done under his nose and within his sight. He cannot be permitted to fill up the lacuna at a stage when the case is ripe for rebuttal and arguments.

For the aforesaid reasons, I do not find any infirmity or material irregularity in the judgment order. Resultantly, this civil revision is dismissed.

8. Revision dismissed.