

(2011) 04 P&H CK 0329

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2808 of 2011 (O and M)

Rajbir

APPELLANT

Vs

Net Ram and Others

RESPONDENT

Date of Decision: April 29, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

The present revision petition has been filed under Articles 226/227 of the Constitution of India for setting aside order dated 25.3.2011 passed by learned Additional Civil Judge, Senior Division, Palwal, vide which application filed by Petitioner-Plaintiff for appointment of Local Commissioner has been dismissed.

2. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by learned trial Court.

3. Facts relevant for the decision of present revision petition are that a suit for permanent injunction was filed by Petitioner-Plaintiff on the plea that wall shown by letters "AB" is a joint wall of the parties and Respondents be restrained from demolishing the same. Suit was contested by Respondents-Plaintiffs. Issues were framed. Evidence was adduced by both the parties and the case was fixed for arguments, when an application was filed on behalf of the Petitioner for appointment of Local Commissioner, which was dismissed by learned trial Court vide impugned order by observing as under:

7. By way of filing the present application, applicant has requested for appointment of a local commissioner to visit the spot and to report about the existing state of

affairs. Perusal of case file reveals that the present suit is a simple suit for permanent injunction wherein Plaintiffs/applicants have claimed that the wall 'AB" is the joint wall of the parties. Plaintiffs have alleged that Defendants want to demolish the first floor of the house of the Plaintiffs located on the northern southern portion of the joint wall 'AB" and are threatening to demolish the joint wall 'AB" in dispute. On the other hand Defendants have claimed that wall 'AB" is exclusively owned and possessed by them. Thus it is clear from the pleadings of the parties that there is a dispute regarding the ownership of the wall in dispute 'AB". The fact regarding the ownership of the wall can be proved only by leading substantial evidence. Both the parties have already concluded their evidence and now at this stage this Court considers that there is no need to appoint any local commissioner for collecting report of existing state of affairs of wall in question. This Court also considers that report of LC is not at all necessary for deciding the matter in controversy involved in the present case. Therefore, keeping in view the entire facts and circumstances, this Court finds no merit in the application and same is hereby dismissed.

4. It has been contended by learned Counsel for the Petitioner that appointment of Local Commissioner is necessary for proper adjudication of the case. However, sufficient reasons have been given by learned trial Court for not accepting the request of the Petitioner for appointment of Local Commissioner. Moreover law is well settled that Court is not to collect the evidence for the parties. It was for the Plaintiff to prove that disputed wall is a joint wall.

5. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

6. Moreover, law has been well settled by Hon"ble Apex Court in *Surya Dev Rai v. Ram Chander Rai and Ors.* 2004(1) RCR (Civil) 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

7. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.