
(2014) 07 P&H CK 0322

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 6056 of 2009 (O&M)

Ram Narayan

APPELLANT

Vs

Ramesh

RESPONDENT

Date of Decision: July 28, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 32

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: P.R. Yadav, Advocate for the Appellant

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

This is an admitted revision petition which has been listed for disposal in the motion list.

2. As per office report, counsel for the respondents has been informed regarding the date fixed but learned counsel for respondent no. 1, who is the only contesting respondent, has not put in appearance today.

3. In brief, the petitioners have challenged the order dated 20.07.2009 passed by the Executing Court on an application filed under Order 21 Rule 32 of the CPC. As per the facts given to the Court, the plaintiff/respondent no. 1 filed a suit for permanent injunction which was decreed on 10.02.2006. He filed the execution on 21.03.2006. During the course of hearing, the following order was passed by the learned Executing Court on 12.08.2006:-

Arguments heard. In order to ascertain the unauthorized encroachment, Halqa Girdawar is appointed as Local Commission who is directed to visit the spot and demarcate the suit land. His fees is fixed Rs. 1,000/- which shall be paid by the DH. His report is awaited on or before 28.10.06. LC is directed to visit the spot after

giving notice to both the parties.

4. Since the Halqa Girdawar was appointed as a Local Commissioner, he was supposed to give notice to the parties, but he delegated this function to the Halqa Patwari as is evident from the following letter addressed to him on 25.05.2007:-

From

Girdawar Halqa,
Rewari.

To

Patwari Halqa,
Rewari.

Subject:- Demarcation of land in village Hazariwas, Tehsil Rewari of case Ramesh son of Jai Kishan Vs. Ram Narayan etc.

On the above mentioned subject, the Ld. Court of Sh. Ajay Tewatia, ACJ (SD), Rewari has appointed me as Local Commission for demarcation of the disputed land in the village Hazariwas. Therefore, in compliance with the order, the demarcation is to be carried out on 30.05.2007 in the morning. So, you yourself come present at the spot along with revenue record and the concerned both the parties be informed about the above mentioned date and report be made so that the demarcation could be done.

1. Ramesh son of Jai Kishan

Sd/- Ramesh

2. Ram Narayan, Om Parkash,
Ved Parkash sons of Dharam Chand

3. Other responsible persons

4. Chowkidar of the village

Sd/- 25.5.07

5. Thereafter, the Halqa Girdawar demarcated the plot in dispute and prepared his report dated 30.5.2007 along with a site plan in which the extent of encroachment by the petitioners is indicated with red colour. As per said report, the petitioners have raised construction of a boundary with brick and clay. The petitioners filed objection to the aforesaid report, to which reply was also filed by the decree-holder who again filed an execution application on 09.05.2009 reiterating the stand that the petitioners are violating the decree of injunction by putting bricks, pebbles and fire wood etc. in the property in dispute. The learned Executing Court, relying upon the report of the Halqa Patwari dated 30.05.2007, issued warrant of possession to the Tehsildar, Rewari for delivery of possession of the property in dispute to the

decree-holder as per the site plan prepared by the Halqa Patwari. It is also ordered that in case, the petitioners-JDs raise any kind of obstruction, then the Tehsildar, being an Executive Magistrate, would be competent to take necessary police help from the SHO concerned to execute the decree dated 10.02.2006.

6. Counsel for the petitioners has submitted that the entire exercise done by the Halqa Girdawar/Local Commissioner is contrary to the order dated 12.08.2006 as he was directed by the Court to visit the spot after giving notice to both the parties. The positive case of the petitioners is that the Halqa Girdawar/Local Commissioner did not give notice either himself or any notice through the Halqa Patwari. It is also submitted that in the proceedings recorded on 25.05.2007, only the signatures of plaintiff Ramesh are there, but there are no signatures of the present petitioners, namely, Ram Narayan, Om Parkash and Ved Parkash sons of Dharam Chand and because of that reason, they were not present at the time when the demarcation was carried out which is evident from the list prepared of the persons present at the time of demarcation in which the present petitioners are conspicuous by their absence.

7. Thus, it is clear from the facts brought on record and not disputed by the learned counsel for respondent no. 1 as he is not available that there is no notice to the present petitioners by the Halqa Girdawar or even by the Halqa Patwari about the date and time of the demarcation which has become the basis of the impugned order because the learned Executing Court has issued warrant of possession to the Tehsildar, Rewari to deliver possession of the property in dispute to the plaintiff as per the site plan placed on record by the Halqa Girdawar, meaning thereby, the said site plan was prepared by the Halqa Girdawar at the time when the demarcation was carried out indicating the nature of encroachment by the petitioners. Though, in the present case, there was a specific direction by the Court in its order dated 12.08.2006 that the demarcation be carried out after giving notice to both the parties, yet it is well settled that nobody should be condemned unheard especially when the dispute is with regard to the boundary of the property in dispute which is claimed by both the parties.

8. In view of the aforesaid discussion, the present revision petition is hereby allowed, impugned order is set aside and the matter is remanded back to the learned Executing Court to get the land re-demarcated after giving notice to both the parties, as provided in the order dated 12.08.2006.

9. Since the proceedings before the learned Executing Court were stayed, therefore, the parties are directed to appear before the learned Executing Court on 01.09.2014.