



2024:PHHC:164152

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CR No.3077 of 2023 (O&M)**Reserved on:27.11.2024****Pronounced on: 10.12.2024****Kuldeep Kumar Sharma****.....Petitioner****Vs.****Randeep Rana****.....Respondent****CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by:-

- Mr. B.S. Bedi, Advocate for the petitioner.
- Mr. Akshay Jindal, Advocate with
Mr. Vrishank Suri, Advocate for the respondent.

DEEPAK GUPTA, J.

Petitioner herein is the Judgement Debtor before Ld. Executing Court. He is aggrieved by the impugned order dated 18.4.2023 passed by the executing court of ACJ(SD), whereby the application moved by him under Order 26 Rule 10 (2) CPC for examination of the Local Commissioner i.e. Naib Tehsildar, Karnal and Mr. Nitin, Junior Engineer (Civil), Panchayati Raj Karnal, has been dismissed.

2. As the paper book would reveal, the suit for specific performance filed by the plaintiff-Decree Holder (*Respondent herein*) was decreed by learned Additional Civil Judge (Senior Division), Karnal vide judgment dated 14.03.2017. The said judgment attained finality, inasmuch as the appeal filed by the JD – defendant (*petitioner herein*) was dismissed by the Appellate Court on 01.09.2021 and Regular Second Appeal filed by him was dismissed by this Court on 18.02.2022.

3. The suit property comprises of a showroom and plot within the boundary wall as shown in the site plan. As per the terms of agreement between the parties, it had been agreed that measurement will be taken at the time of execution of the sale deed and whatever area would be found, the sale deed of the said area would be executed for the price of the said area only.

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4. Suit was decreed in the following terms:-

“Suit of the plaintiff is hereby partly decreed with cost to the effect that the plaintiff- Randeep Rana is entitled for specific performance of agreement to sell dated 28.2.2011 in his favour on payment of balance sale consideration in respect of suit land as existing on the site after demarcation within a period of three months from the date of this order and the defendant is directed to get executed the requisite sale deed on the receipt of the balance sale consideration, failing which the plaintiff shall be entitled to get the same executed by the Court of law.”

5. The dispute, as of now, is regarding the measurement of the suit property. Perusal of the paper book further reveals that along with the execution, decree holder moved an application for appointment of a Local Commissioner to demarcate the suit property. Despite service, JD chose not to appear and so, was proceeded ex-parte. Application for demarcation of the suit property was allowed. Tehsildar was directed to get the suit land demarcated. He submitted his report on 15.12.2021, as per which the area of the disputed property was 483 square yards. Thereafter, JD appeared and was allowed to join the proceedings. He prayed for fresh demarcation. The application was allowed. Tehsildar Karnal was again appointed as the Local Commissioner, who after giving notice to both the parties, demarcated the suit land and in his report, found the area of the disputed property to be 483.23 square yards. The Judgment Debtor filed objections to the said report but the same were dismissed by the Executing Court on 20.09.2022. He then filed Civil Revision No.4482 of 2022 before this Court.

6. Disposing of the above Civil Revision on 17.11.2022, a Co-ordinate Bench of this Court passed the following order :-

“The present petition has been filed, challenging an order dated 20.09.2022 passed by the Executing Court, whereby objections, filed at the instance of petitioner/JD to the report submitted by the Local Commissioner in execution proceedings, have been dismissed.

Considering the nature of the dispute, which revolves around the

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area of property in question, learned counsel for the petitioner submits that the Executing Court has committed an error while passing the impugned order.

On the other hand, Sh. Ashish Aggarwal, Sr. Advocate assisted by Mr. Vishal Pundir, Advocate and Ms. Nidhi Gakkhar, Advocate, who has put in appearance on behalf of the respondent submits that the demarcation of land in question already stands carried out.

I have heard learned counsel for the parties and gone through the paper book.

Considering the nature of controversy involved, learned counsel for both the parties submit that they shall have no objection, in case, a fresh demarcation of the decretal property is ordered to be carried out in a time bound manner.

Accordingly, the Naib Tehsildar, Karnal is requested to carry out a fresh demarcation of the site in question, which is situated in Khasra Nos.9705-4096 at *Kasba* Karnal with the assistance of revenue officials and the relevant revenue record. It shall also be appreciated, in case, the Naib Tehsildar Karnal seeks assistance of any serving Junior Engineer (Civil) for the aforesaid purpose.

Considering the fact that the decree in favour of respondent is dated 14.03.2017, I deem it appropriate to direct that the entire aforementioned exercise be carried out within a period of four weeks from today and a report within a week thereafter be submitted before the learned Executing Court. Keeping in view the fact that the previous report made by the Local Commissioner was challenged primarily on the ground that the petitioner herein was never put to adequate notice by the Local Commissioner before visiting the spot, the parties are hereby put to notice and directed to remain present at the spot on 07.12.2022 at 11:00 a.m., for the purpose of Local Commissioner to visit the site and to carry out demarcation. It may be noted here that the date i.e. 07.12.2022 has been fixed in concurrence with the Naib Tehsildar, Karnal with the able assistance and help of Sh. Gaurav Jindal, Additional Advocate General, Haryana, who has coordinated the same telephonically with the concerned Naib Tehsildar, namely, Sh. Ram Kumar.

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For the purpose of effective implementation of the aforesaid order, let a copy of the same be also supplied to Sh. Gaurav Jindal, Additional Advocate General, Haryana for its onward transmission to the officials concerned, so that the needful is done in the aforesaid manner.

Accordingly, the present petition stands disposed of.

Pending application (s), if any, shall also stand disposed of.”

7. Pursuant to the aforesaid order of this Court, Naib Tehsildar Karnal along with the JE concerned conducted the demarcation with the help of DGPS machine and found the area of the property in dispute to be 483.10 square yards. The Judgment Debtor then moved an application under Order 26 Rule 10 (2) CPC for examination of the Local Commissioner and also Mr. Nitin, Junior Engineer (Civil) Panchayati Raj, Karnal who had accompanied him. It was contended that 3 fixed points were not located as per the legal position. It was also alleged that some area of the showroom was shown beyond the line of Khasra number in the site plan prepared by the Computer operator. Prayer was made by Judgment Debtor to examine the Local Commissioner i.e. Naib Tehsildar, Karnal as well as Mr. Nitin, Junior Engineer (Civil) Panchayati Raj in the Court. Along with the said application, the JD also filed certain questionnaires to be put to the Local Commissioner and the Junior Engineer.

8. After taking reply from the Decree Holder, who opposed the application, the same was dismissed by the executing Court by way of the impugned order.

9. Assailing the afore-said order, it is contended by the learned counsel for the petitioner-Judgment Debtor that as per Order 26 Rule 10 (2) CPC, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in the open Court, touching any of the matters referred to him or mentioned in his report or as to his report or as to the manner in which he has made the investigation. Learned counsel contends that demarcation has been conducted thrice. In the first demarcation, the area was found to be 483 square yards; in the second

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demarcation, it was found to be 483.23 square yards, whereas in the third demarcation, it has been found to be 483.10 square yards and in these circumstances and considering the objections made in the application, it is necessary to examine the Local Commissioner and the Junior Engineer accompanying him.

10. Opposing the petition, learned counsel for the respondent-decree holder submits that the only purpose of moving the objections or this revision is to delay the proceedings. Learned counsel contends that suit was decreed in favour of the decree holder-respondent way back in 2017. The decree has attained finality up to this High Court, despite which the judgment debtor is creating all sorts of hurdles in execution of the decree. Learned counsel contends further that the demarcation, as per order dated 17.11.2022 of this court, has been conducted with the help of DGPS machine, which is quite accurate and that in the presence of the modern technology available, JD cannot ask for the demarcation to be conducted as per the old methods by finding out the three pucca points. It is also the contention of the learned counsel that it is not mandatory for the Executing Court to examine the Local Commissioner itself or on the asking of any of the party, unless the Court finds cogent reasons for doing so. Prayer is made for rejecting the petition.

11. This Court has considered the submissions of both the sides and has appraised the record carefully.

12. Order 26 Rule 10 CPC reads as under :

“10. Procedure of Commissioner.- (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and deposition to be evidence in suit.-

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court,

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any of the parties to suit may examine the Commissioner personally in open Court touching any part of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) **Commissioner may be examined in person.**- Where 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.”

13. The use of the word “may” in sub-Rule 2 of Rule 10 of Order 26, as reproduced above would clearly indicate that it is not mandatory for the Court to examine the Local Commissioner. The Court is required to see as to whether there is some real ground for examining the Local Commissioner. It cannot be for some frivolous ground. The discretion lies in the Executing Court in a matter of this nature, as to whether it should permit or refuse a party to examine the Commissioner.

14. This Court in ***Roshan Lal vs. Jai Singh and others, 2015 (4) RCR (Civil) 1032***, has held as under :-

“The Trial Courts are under severe strain for paucity of time and it is essential for the Courts to adopt practices which allow for their smooth functioning without faltering the course of trials in any way. If an objection to local commissioner's report is made, the Court will examine the objection along with other evidence by allowing parties to give evidence as regards the Commissioner's report and if need be to examine the local commissioner himself to elicit the objections raised by the parties. It is important to remember that the local commissioner is not to be understood as witness for anyone party. The provisions of Order 26 Rule 9 that allows a person for inspection of the property and give a report shall be understood in such a way that the Commissioner shall be seen as an extended arm of the Court and hence an officer of the Court. If neither of the parties have any objection to the report, the Court will simply act on the report to the extent that the report is relevant for adjudicating on the controversy involved in the suit. However, if there is any objection to the Commissioner's report, it will be considered by the Court only to satisfy

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itself whether the objection must prevail and if it holds so, it will be competent to reissue the commission to the same local commissioner or under extra-ordinary circumstances, opt for another local commissioner to be issued after scrapping the first report. The attempt must be to ensure that there are no two conflicting versions through two different reports.”

15. It is, thus, clear that the Local Commissioner appointed by the Court is not a witness for any of the party. In fact, he performs his duty as an extended arm of the Court and thus, for all intent and purposes, he is an Officer of the Court. In case either of the party raises objection to the report of the Local Commissioner, it is to be considered by the Court only to satisfy itself whether the objections must prevail or not. It is only if the Court finds sufficient grounds that it will be competent to re-issue the commission to the same Local Commissioner or under extra ordinary circumstances opt for another Local Commissioner to be issued after scrapping the first report. Merely on the asking of an applicant, it is not mandatory to examine the Local Commissioner.

16. In this case, the Local Commissioner conducted the Commission as per the orders of this Court, with the help of DGPS system.

17. This Court, with the assistance of artificial intelligence with the help of Chat GPT, put the question about the efficacy of the DGPS system in locating or demarcating a disputed property. It would be relevant to reproduce the question put by this Court and the answers as received. It reads as under :-

“Question by this court: How DGPS helps in locating or demarcating a disputed property?

Answer by Chat GPT: Differential Global Positioning System (DGPS) is a highly precise positioning system that enhances the accuracy of standard GPS by correcting signal errors in real-time. Here's how DGPS helps in locating or demarcating a disputed property:

1. Enhanced Accuracy



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- DGPS reduces errors caused by atmospheric interference, satellite clock inaccuracies, and multipath effects, providing centimeter-level accuracy.
- This is crucial for determining exact property boundaries, especially in legal disputes where precision is critical.

2. Reference Station Support

- DGPS uses a network of ground-based reference stations that compare GPS satellite data to known positions.
- These stations calculate correction factors that are transmitted to a rover receiver (handheld or vehicle-mounted) at the site of the property.

3. Mapping and Surveying

- Surveyors use DGPS to map out the exact coordinates of a disputed property.
- The system integrates with Geographic Information Systems (GIS) to overlay the property boundary on to cadastral maps or satellite images for visual clarity.

4. Real-Time Positioning

- DGPS provides real-time location data, enabling surveyors to confirm boundary markers directly on-site without the need for manual re-calculations.

5. Boundary Dispute Resolution

- In cases where the property boundaries are unclear, DGPS can be used to align with legal documents such as land deeds, cadastral maps, or government records.
- This precise alignment helps to clarify any discrepancies, making it easier to resolve disputes.

6. Cost-Effective and Time-Saving

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- DGPS significantly reduces the time and cost compared to traditional land surveying methods.
- Its efficiency is particularly beneficial in large or inaccessible areas.

Applications in Disputed Property Cases

- **Verification of Boundaries:** Confirms if existing boundary markers match the legal documentation.
- **Setting New Markers:** Precisely places new markers in agreement with adjudicated boundaries.
- **Evidence in Legal Proceedings:** DGPS data can be presented in court as evidence to support claims regarding property limits.

By offering unmatched accuracy and reliability, DGPS is a valuable tool in resolving property disputes and ensuring clear and legally compliant boundary demarcation.”

18. It is, thus, clear that DGPS provides centimeter level accuracy. It is crucial for determining exact property boundaries especially in the legal disputes, where the precision is critical. DGPS uses network of ground based reference stations that compare GPS satellite data to known positions. These stations calculate correction factors that are transmitted to a rover receiver at the site of the property.

19. The system of DGPS so as to measure or locate or demarcate a property is the modern technology and with the passage of time, the old technology of demarcating the property with the help of finding three *pucca* points must give way to the modern technology, which helps to measure and demarcate the property with precision.

20. The Local Commissioner has found the exact area of the disputed property to be 483.10 square yard, which is just at a little variance from earlier reports, inasmuch as, the area in the first report was found to be 483 square yards and in second report, it was found to be 483.23 square yards. It is also relevant to mention here that Ld. counsel for the decree

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holder-respondent submits that respondent is even ready to pay the balance amount as per the maximum area found in three reports i.e. 483.23 square yards but the only intention of the petitioner-JD is to delay the proceedings.

21. The above said contention appears to contain force considering the fact that when initially the decree holder applied for appointment of the Local Commissioner to demarcate the property, JD preferred not to contest the matter and was proceeded ex-parte. It was only after the receiving of the first report that he moved application to participate in the proceedings. He was allowed to do so. Second Local Commissioner was appointed and the same was conducted in the presence of both the parties. JD filed objections and same were dismissed. Then he filed revision against the dismissal of objections before this Court. The revision was accepted. Third commissioner was appointed, who conducted the commission with the help of DGPS system.

22. The objections by the JD-petitioner appears to have been moved only with the purpose of delaying the proceedings.

23. After considering all the facts and circumstances, this Court finds that the impugned order does not suffer from any illegality or perversity. The Executing Court has not committed any error in exercising the discretion vested in it, by declining the request of the petitioner to examine the Commissioner or the Junior Engineer, who had accompanied him at that time.

24. On account of the aforesaid discussion, the present revision is hereby dismissed, being devoid of any merits.

Pending application (s), if any, shall also stand disposed of.

December 10, 2024

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**(DEEPAK GUPTA)
JUDGE**

Whether Speaking/reasoned Yes

Whether Reportable Yes