

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Pronounced on: 16.08.2022

CM (M) No. 70/2021

Darshan Singh

.....Appellant(s)/Petitioner(s)

Through: Mr. D.S.Saini, Advocate.

Vs

Indru Devi

..... Respondent(s)

Through: Mr. Sachin Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The learned trial court, Ist Additional Munsiff, Jammu, on an application moved by the respondent-defendant in the suit, vide order dated 15.12.2021 appointed Naib Tehsildar of the concerned area as Commissioner who was required to visit the spot and make inspection with respect to the dispute between the parties and clarify the position as to whether the Iron Poles or barbed wire were existing on the suit land and to submit the report along with photographs and site plan.
2. The petitioner-plaintiff aggrieved by the appointment of the Commissioner by the trial court has approached this court under Article 227 of the Constitution of India seeking setting aside of the order passed by the trial court on the ground that the same is not as per law and more so when the respondent-defendant had admitted the fact that she had sold the land measuring 18 marlas in favour of the petitioner-plaintiff and there was no dispute with regard to the

possession of the plaintiff also in the land in question. The court could not create evidence by appointing the Commissioner as the same will be against the law.

3. The respondent has appeared through counsel and has contested the present petition.
4. The learned counsel for the petitioner while reiterating the averments contained in the petition has argued that the Commissioner could not be appointed to collect the evidence on behalf of either of the parties and there was no reason to otherwise appoint the Commissioner by the trial court. The petitioner has cited Judgment reported in 2006 Legal Eagle 48 (Janak Raj v. Rachhpal Chand and others) and 2014 Legal Eagle (RAJ) 2012 (Capricorn Life Style Pvt. Ltd. v. Sunil Kumar) in support of his argument that the application filed for appointment of Commissioner in terms of O 39 R 7 CPC could not have been allowed by the trial court.
5. The learned counsel appearing for the respondent has argued that the jurisdiction of the court under Article 227 of the Constitution cannot be invoked in a case like the present one. The trial court has not committed any error in appointing the commissioner as the same is to only clarify the position on spot and nothing more. The respondent has not admitted the possession of the plaintiff in the land in question as per the written statement. Infact the petitioner herein has encroached upon the land of the respondent. The report of the Commissioner will only help the court in determining the issues that may arise before the

trial court. The appointment of Commissioner is not with a purpose to create evidence for the plaintiff or the defendant in the suit. The objections to the petition have also been filed by the respondent.

6. The supervisory jurisdiction of the court in exercise of power under Article 227 of the Constitution cannot be invoked merely on the premise that some wrong has been committed by the trial court while passing the order. The facts of the case could result into passing of order other than the one passed by the subordinate court cannot be the ground to seek interference in the order passed by the court. The manifest miscarriage of justice can prompt this court to exercise such jurisdiction. The law down by the Hon'ble Apex Court in 2015 Legal Eagle (SC) 135 (Radhey Sham and another v. Chhabi Nath and others) which sets out the contours for exercising jurisdiction under Article 227 will determine as to whether the impugned order calls for exercise of jurisdiction.
7. The perusal of the plaint filed by the petitioner herein reveals that the petitioner-plaintiff seeks restraining order against the defendant from removing or causing any damage to the iron poles from southern side or any other side of the plot installed over the concrete allegedly raised by the plaintiff over the plot in question which measures 18 Marlas in Khasra No. 657/90 falling in Patwar Halqa Hakkal, Tehsil Jammu. The petitioner claims to have purchased this piece of land from the respondent and further claims to be in possession of the same on the execution of the sale deed. The defendant in her reply has controverted

the stand of the petitioner as she has stated that petitioner-plaintiff is infact trying to create interest exceeding land measuring 18 Marlas. The respondent in her written statement has also raised the plea of 22 ft wide public road which the plaintiff had to provide as thoroughfare so that the thoroughfare can be used by both the parties to the suit. The respondent also controverted the stand of the petitioner while filing the written statement that the poles and barbed wires were laid by the petitioner.

8. Prima facie it is made out from the written statement filed by the respondent-defendant that the respondent though has not denied the execution of the sale deed yet she has denied the other averments contained in the plaint. The argument of the learned counsel for the petitioner herein that the respondent has not denied the exclusive possession over the suit property and, therefore, the poles and the barbed wire that are alleged to be raised by the plaintiff shall be deemed to have been raised by the petitioner cannot be accepted. As stated above, the respondent in her written statement has denied the assertion that the poles and barbed wire have been raised by the plaintiff in his property. The trial court while appointing the Commissioner cannot be said to have passed the order with a purpose of creating evidence for either of the parties and thus has not transgressed its jurisdiction. The report of the Commissioner is not the final word and is subject to the objections that may be taken by the parties to the suit. The purpose of appointment of the Commissioner is limited as is evident from the order impugned. The judgments cited by

the learned counsel for the petitioner herein do not come to the rescue of the petitioner as they are passed in the facts and circumstances of the cases.

9. This court is of the view that the order impugned does not call for any interference by this court in exercise of its supervisory jurisdiction. In case the trial court has passed the order with a purpose to satisfy itself on a certain aspect of the matter, this court finds nothing wrong in the same and there is no reason to set aside the order. Relying upon the judgment of the Apex Court in Radhey Sham's case (supra), the present petition is otherwise not maintainable in the facts and circumstances of the case as no manifest miscarriage of justice is discernable to have taken place through the impugned order passed by the trial court.
10. The petition is without merit and is, accordingly, dismissed.
11. The parties to the suit will be at liberty to take the objections in case they have any against the report of the Commissioner as and when the same is filed.
12. Disposed of.

(Puneet Gupta)
Judge

Jammu :
16.08.2022
Pawan Chopra

Whether the order is speaking	:	Yes
Whether the order is reportable	:	Yes