

(7) For all the reasons recorded above, I find that the impugned order, Annexure P.4, cannot possibly be sustained and is thus annulled. The net result is that the petitioner continues to be in the service of the respondent State as on July 5, 1982, the date of letter, Annexure P.3, withdrawing the notice, Annexure P.2. Keeping in view the fact that the petitioner too by her letter, dated June, 7, 1982 (Annexure P.2), contributed towards the passing of the impugned order, she is not entitled to any costs.

N.K.S.

Before J. V. Gupta, J.

GURBACHAN SINGH and others,—Appellants.

versus

AMRIK SINGH and others,—Respondents.

Regular Second Appeal No. 1810 of 1973.

October 4, 1982.

Code of Civil Procedure (V of 1908)—Order XXVI Rules 9 and 10—Local Commissioner appointed for demarcating the land in dispute—Report of the Commissioner not accepted and the suit decided on merits—Request made for the appointment of another Commissioner—Court opining that no useful purpose would be served by the appointment of another Commissioner—Appointment of another Commissioner—Whether in the discretion of the Court.

Held, that Order XXVI Rule 9 of the Code of Civil Procedure, 1908 provides for the appointment of Commission for Local investigation. Rule 10 of Order XXVI further provides the procedure of Commissioner. A discretion has been given to the trial Court to direct further inquiry as it may think fit in the circumstances of a given case. It cannot be successfully argued that under clause (3) of Rule 10, the trial Court or the lower appellate Court is under any legal obligation as such to appoint another Commission when it is dissatisfied with the proceedings of the Commission already appointed. Thus, a reading of the provisions of sub-clause (3) of Rule 10 of Order XXVI of the Code makes it evident that it is a discretion of the Court to appoint another Commissioner and it is in no way obligatory to do so particularly when the Court comes to the conclusion that it will serve no purpose.

(Paras 9, 10 & 13)

Gurbachan Singh and others v. Amrik Singh and others
(J. V. Gupta, J.)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Karnal, dated 7th day of September, 1973, affirming that of the Sub-Judge 1st Class, Karnal, dated the 12th May, 1970, dismissing the suit of the plaintiff with costs of the contesting defendants.

Claims: Suit for possession of plot No. 13 bearing khasra No. 11176/145 measuring 1 acre 7 marlas, situated in Karnal proper as shown red in the plan attached with the plaint. Claim in Appeal: or reversal of the order of lower Courts.

N. C. Jain, Advocate with Arun Jain and V. K. Jain, Advocates,
for the Appellants.

V. K. Bali, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This is plaintiff's second appeal whose suit for possession of land has been dismissed by both the Courts below.

(2) The plaintiff-appellants filed the suit for possession of a part of land out of plot No. 13 bearing khasra No. 1176/1445 on the allegations that Mukand Singh, predecessor-in-interest of the plaintiffs, purchased this plot measuring 1 Acre, 7 Marlas for Rs. 36,650 on March 11, 1956 from the Rehabilitation Department and he was delivered actual physical possession of the agricultural land on June 12, 1957. The said Mukand Singh had also associated some claimants including Labha Mal, plaintiff No. 5, whose claims were adjusted towards the payment of the piece of the sale land. The adjoining plot bearing khasra No. 1446, Kothi No. A-75 was sold by the Rehabilitation Department to Gopal Singh and others, who subsequently sold the same to the defendants. According to the plaintiffs, the contesting defendants are in illegal possession of a part of the land described as A B C D E in the plan attached with the plaint which is stated to be a part of plot No. 13.

(3) The defendants filed their written statement in which they denied that the suit property is a part of plot No. 13. They pleaded that Mukand Singh sold only 7 Kanals and 14 Marlas of land and not 1 Acre and 7 Marlas of land as alleged in the plaint.

(4) On the pleadings of the parties, the trial Court framed the following issue:—

“(1) Whether the land to dispute belongs to the plaintiffs and the defendants have encroached upon it.

(2) Relief.”

(5) In the trial Court, for the demarcation of field No. 11176/1445 a local commission had been issued which was executed by Shri Om Parkash Vaid, Tehsildar, Karnal. Against his report, objections were filed by the contesting defendants as the report was in favour of the plaintiffs. On account of these objections, the trial Court, in order to decide the validity of the report of the Local Commissioner, framed the following issues:—

“(1) Whether the report of the Local Commissioner is liable to be set aside on the objections mentioned in the objection petition ?

(2) Relief.”

(6) The trial Court ultimately accepted the objection petition filed on behalf of the defendants and did not accept the report of the Local Commissioner. On merits, it came to the conclusion that the plaintiffs have failed to prove, from the evidence on record, that the land in dispute is a part of khasra No. 11176/1445 as alleged by the plaintiffs. As a result of this finding, the plaintiffs' suit was dismissed. In appeal, the learned Additional District Judge affirmed this finding of the trial Court, though on certain points the finding of the trial Court was reversed, but the same is not material for the decision of this appeal. Ultimately, the trial Court's decree dismissing the plaintiff's suit was maintained.

(7) A request was made to the lower appellate Court to appoint another commission, but the lower appellate Court declined the said request with the observation that “no useful purpose will be served in remanding the case or in appointing a Local Commissioner”. Dissatisfied with the same, the plaintiffs have come up in second appeal in this Court.

(8) Primarily, whether the site in dispute is a part of khasra No. 11176/1445 or not, is a question of fact. Since both the Courts below have concurrently held that the plaintiffs have failed to prove the site in dispute to be part of said khasra number, the learned counsel for the appellants vehemently contended that it was a fit case where another Local Commissioner should have been appointed to demarcate the boundaries. According to the learned counsel, the report of the Local Commissioner, appointed by the trial Court, was in favour of the plaintiffs and, therefore, it was in the fitness of the circumstances that, in case that report

Gurbachan Singh and others v. Amrik Singh and others
(J. V. Gupta, J.)

was not accepted, the trial Court should have appointed another commission or, in any case, the lower appellate Court should have remanded the case or have appointed another commission. Having failed to do so, the findings arrived at are vitiated. In support of his contention, he referred to *Pohlu Ram v. Gram Panchayat, Dharamgarh alias Badowal* (1) *K. Ramalingam v. M. V. Ramanathan*, (2) and *Debendranath Nandi v. Natha Bhuiyan* (3).

(9) After hearing the learned counsel for the parties, I am of the considered opinion that there is no merit in this appeal. Order XXVI Rule 9 of the Code of Civil Procedure provides for the appointment of commission for local investigation. Rule 10 of Order XXVI further provides the procedure of Commissioner. Clause (3) of Rule 10 provides that:

“Whether 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.”

(10) Thus, a discretion has been given to the trial Court to direct further enquiry as it may think fit in the circumstances of a given case. It cannot be successfully argued that under this provision, the trial Court or the lower appellate Court is under any legal obligation as such to appoint another commission when it is dissatisfied with the proceedings of the commission already appointed.

(11) In *Pohlu Ram's case* (supra) the point of dispute between the parties was whether by the construction in dispute the plaintiff had encroached upon the circular road of the village. This matter, according to the learned Judge, could be decided only by making measurements at the spot for which purpose it was necessary to appoint a commissioner. Admittedly, in that case, no commissioner was appointed by the trial Court at any stage. In *K. Ramalingam's case* (supra), it was held that where a particular matter has already been the subject of investigation and a report has been submitted by a Commissioner in that behalf, another commission for the same purpose should not

(1) 1980 P.L.J. 24.

(2) A.I.R. 1978 Karnataka 65.

(3) A.I.R. 1973 Orissa 240.

ordinarily be issued unless upon valid grounds made out by the parties concerned it is found that the previous report is unreliable and, therefore, should be set aside. Thus, in no way, these judgments support the contention of the learned counsel for the appellants. In *Debendranath Nandi's case* (supra), the learned Judge, on the facts and circumstances of that case, came to the conclusion that that was a fit case which should go back to the trial Court on remand so that the Court can appoint a suitable Commissioner to enquire into the exact matter which was earlier referred to the Commissioner for local investigation by the trial Court.

(12) In *Bibhuti Bhushan Bank and another v. Sadhan Chandra Sheet and others*, (4), cited on behalf of the respondents, it has been held that the acceptance or rejection of the Commissioner's report is entirely within the Court's competence. It has full discretion in the matter but the said discretion is to be exercised properly and not capriciously. If the Court rejects a Commissioner's report after proper exercise of discretion and holds other evidence on the record as sufficient for the disposal of the case, it is not obligatory or compulsory on the Court to order another investigation.

(13) Thus, from the perusal of the said authorities cited at the Bar and from the reading of the provisions of Order XXVI, Rule 10 sub-clause (3), Code of Civil Procedure, it is evident that it is the discretion of the Court to appoint another Commissioner and it is in no way obligatory to do so particularly when the Court comes to the conclusion that it will serve no purpose. In the present case, the lower appellate Court considered this request made on behalf of the appellants, but found that, in fact, no useful purpose will be served in remanding the case or in appointing a Local Commissioner.

(14) As regards the merits of the case, the lower appellate Court has discussed the matter in detail and has given a firm finding, which is based on the appreciation of evidence on the record. It has been held that it is not proved that the disputed site was part of the area which was sold to the father of the plaintiffs, Mukand Singh, out of the total area of the khasra number mentioned in the plaint. It has been further observed that it might be that the area sold in favour of the father of the plaintiffs comprised of the remaining area of the khasra number other than the one in dispute.

(4) A.I.R. 1965 Calcutta 199.

Malik Hans Raj v. Prem Pal Singh and others (J. V. Gupta, J.)

(15) Under these circumstances, I do not find any infirmity or illegality in the judgment of the lower appellate Court as to be interfered with in the second appeal. Consequently, the appeal fails and is dismissed with costs.

N. K. S.

Before J. V. Gupta, J.

MALIK HANS RAJ,—Petitioner.

versus

PREM PAL SINGH and others,—Respondents.

Civil Revision No. 2922 of 1980.

October 5, 1982.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(4)—Order of ejectment passed against a tenant on the ground of personal necessity of the landlord—Possession obtained by the landlord in execution of the order—Tenant applying for restoration of possession under section 13(4)—Landlord selling the property and the building reconstructed—Tenant—Whether entitled to possession of the reconstructed building.

Held, that the building which was rented out to the tenant to which he is entitled to be restored under section 13(4) of the East Punjab Urban Rent Restriction Act, 1949 does not exist at the site because the objectors-vendees have reconstructed it. Under the circumstances, the tenant could not be allowed the restoration of possession of the building which exists at the site even if the doctrine of *lis pendens*, as contemplated under section 52 of the Transfer of Property Act, 1882 is at all attracted to the facts of the case. Under the provisions of section 13(4) of the Act, a tenant is entitled to the restoration of the building which was rented out to him and was got vacated by the landlord from him on the ground that he *bona fide* required the same for his own use and occupation. However, if for certain reasons the said rented building ceases to exist after the tenant had vacated the same in pursuance of the ejectment order, then the tenant cannot claim the restoration of the building which has been constructed subsequently after the demolition of the building originally rented out to him. Under section 13(4) of the Act, the interest of a tenant is a limited one. He is not entitled to any property as such, but is entitled only to the restoration of possession of the building rented out to him from which he was ejected in pursuance of the order of eviction. Moreover, the vendees who