

THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**(1) Revision/TA/0874/2012/Sri Ganganagar****(2) Revision/TA/0907/2012/Sri Ganganagar****Common Parties in both the revisions:**

Major Singh s/o Shri Kartar Singh Caste Jattsikh r/o Mehraj, Tehsil Rampuraphul, District Bhatinda through general power of attorney holder Shri Jagmal Singh s/o Shri Major Singh Caste Jattsikh r/o Doodakheechad, Tehsil Sadulshehar, District Sriganganagar

----- Petitioner**Versus**

- 1- Jagroop Singh s/o Harnek Singh
- 2- Kuldeep Singh s/o harnek Singh
- 3- Darshan Singh s/o Harnek Singh
- 4- Amandeep Kaur s/o Gurdeep Singh
- 5- Kalvindar Singh s/o Gurdeep Singh
- 6- Banso d/o Harnek Singh
- 7- Rani d/o Harnek Singh
- 8- Bindar Kaur d/o Harnek Singh
- 9- Kiranjeet Kaur d/o Harnek Singh
- 10- Moorti Kaur d/o Harnek Singh
- 11- Gurcharan Singh s/o Kartar Singh
- 12- Malkeet Singh s/o Kartar Singh
- All Caste Jattsikh, residents of Mehraj, Tehsil Rampurphul
- 13- State of Rajasthan

----- Non-petitioners

Single Bench
Shri Moolchand Meena,
Member

Present:-

Shri Amritpal Singh, Advocate for the Petitioner:

10-02-2012**Order**

1. These two revisions under section 230 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been filed by the petitioner against the order dated 27-01-2012 passed by the Sub-Divisional Officer, Sadulshehar (Sri Ganganagar), whereby petitioner's application under order 39 Rule 7 of Civil Procedure Code, 1908 in case No.49/2011 and another application under order 26 Rule 9 of the Civil Procedure

Code, 1908 in case No.63/2011 for appointment of the Commissioner for inspection of site of the disputed land were rejected.

2. Since facts, litigating parties and the impugned orders are common in both the revisions; therefore both the revisions were heard simultaneously and are being decided by this common order. Copies of this order be kept in both the files.

3. Brief facts of the case leading to these revisions are that the petitioner's suit under section 88, 188 of the Act of 1955, is pending in Trial Court with averments that the disputed land is under cultivatory possession of the petitioner. An application for temporary injunction has also been filed under section 212 of the Act of 1955. During the pendency of the suit, the petitioner filed two applications before the Trial Court. One application under Order 26 Rule 9 of the Civil Procedure Code, 1908 was filed in the suit and another application was filed under Order 39 Rule 7 of the Civil Procedure Code, 1908 in application under section 212 of the Act of 1955. Common averments of the petitioner in both the applications are that crop sown by the petitioner is standing at present on the land in question and the land is under cultivatory possession of the petitioner. It was averred that it is in the interest of justice to get the report of the commissioner regarding position of cultivatory possession on the land in question. The Trial Court after affording opportunity of hearing to both the parties has rejected both those applications by its impugned order. Therefore these two revisions have been filed before this Court with request to set aside the impugned order and to accept petitioner's applications for appointment of the commissioner for inspection of the site of the land in question.

4. The petitioner's learned counsel was heard on the point of admission of both the revisions in hand. The learned counsel has submitted that impugned order has been passed without recording reasons thereof. It was essential to get the

commissioner's report regarding possession and cultivation on the land in dispute, but the Trial Court has rejected the application with non-speaking order. Therefore, it has been requested that the impugned order be set aside and an order be issued for appointment of commissioner.

5. I have gone through the impugned order and have considered the arguments advanced by the learned Counsel for the petitioner. The learned Sub Divisional Officer, while rejecting the request for the appointment of the commissioner, has observed that, "प्रार्थी अपने प्रार्थनापत्र में अंकित तथ्यों को दावा में अपनी साक्ष्य से सिद्ध कर सकता है। प्रकरण में तनकियात कायम की जाना शेष है जिसके पश्चात वादी को अपनी साक्ष्य पेश करने का अधिकार है। मैं प्रकरण की इस चरण पर कमिश्नर नियुक्ति किया जा कर मौका की कब्जा काश्त की स्थिति मंगवाई जाना न्यायोचित प्रतीत नहीं पाता हूँ। न्यायालय किसी भी पक्षकार के पक्ष में अपने स्तर पर कोई अतिरिक्त साक्ष्य संग्रहित नहीं कर सकता है।" Recording these reasons, the Sub-Divisional Officer, vide impugned order, has rejected the application under Order 26 Rule 9 of the Civil Procedure Code, 1908 in case No.63/2011. Similar reasons have been recorded for rejection of application under Order 39 Rule 7 of Civil Procedure Code, 1908 in case No.49/2011. In view of observations made by the Sub-Divisional Officer, I am inclined to disagree with argument of the learned counsel that applications have been rejected without recording reasons thereof and by non-speaking order. The impugned order is based on reasons.

6. There is a series of pronouncements by the Board or even by higher level courts that the Court should not use its agency to collect evidence in favour or in against of any party to the litigation. A coordinate bench of this Board, recently, in 2012 (1) RRT 2012 43, after having reliance on 2011 (1) RRT 91 and 2007 (2) RRT 943, has held that when there is a dispute regarding possession on the suit land, it is for the parties to prove their rival claims of possession; agency of Court cannot be used to collect evidence of possession by appointment of a

commissioner. Order commissioner's appointment was quashed. Even, I have also consistently held the similar view in Revision No.0087/2012 decided on 01-02-2012, Revision No.8436/2011 decided on 15-12-2011 and Revision No.8584/2011 decided on 23-12-2011.

7. So far as legal provisions are concerned, Order 26 Rule 9 of the Civil Procedure Code, 1908 is as under:-

“Rule 9: Commissions to make local investigations:

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

Similarly, Order 39 Rule 7 (1) of the Civil Procedure Code, 1908 is as under:-

“7. Detention, preservation, inspection, etc., of subject-matter of suit.- (1) the Court may, on the application of any party to a suit, and on such terms as it thinks fit, -

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or, as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.”

From mere perusal of the Order 26 Rule 9 or Order 39 Rule 7 as above, it is evident that **appointment of the commissioner is entirely a discretionary power of the Court, and if the Court does not deem it necessary to appoint the commissioner, no party to the litigation can claim such appointment as a matter of right. The petitioners or the non-petitioners, themselves have to prove their case by adducing necessary documentary as well oral evidence. Litigants should not look towards the Court to help them in collecting the evidence.**

8. After giving a thoughtful consideration to contentions made by the learned counsel for the petitioner, having gone through the impugned order available in the file, and perusing legal provisions regarding appointment of the commissioner, it is my considered view, that the Sub Divisional Officer, in the cases in hand, has not committed any jurisdictional error in rejecting the petitioner's applications for the appointment of the commissioner. Hence no interference in the impugned order is warranted through revision under section 230 of the Act.

9. In view of the facts of the case, and observations hereinabove, I am of the view that both the revisions in hand are forceless and deserve to be rejected at the level of admission itself. Even calling for the record is also not necessary.

10. Consequently, both revisions are hereby rejected.

Pronounced in the open court.

(Moolchand Meena)
Member