



CR No. 3630 of 2024

IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

CR No. 3630 of 2024(O&M)

Date of decision: 13.05.2025

Darshan Singh

...Petitioner

Versus

Manwinder Kaur

...Respondent

CORAM :HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ravish Bansal, Advocate
for the petitioner.

Mr. P.P.S. Brar, Advocate with
Mr. Rudresh, Advocate
For the respondent.

DEEPAK GUPTA, J.

CM-9234-CII of 2025

This is an application for pre-ponment of the main case (CR No. 3630 of 2024) from 28.10.2024 to some other date.

Notice of the application.

Mr. P.P.S. Brar, Advocate has put in appearance on behalf of respondent and has no objection to pre-pone the main case.

Application is allowed. The main case is pre-poned and taken up on Board for hearing today itself.

CR No. 3630 of 2024

The petitioner is plaintiff before the learned trial Court in civil suit titled as Darshan Singh Vs. Manwinder Kaur, bearing CIS No. CS/162/2023, pending before learned Additional Civil Judge (Sr.Divn.), Jaitu, is aggrieved by the order dated 14.03.2024 whereby his application for appointment of local commissioner was dismissed.

2. According to petitioner, suit for possession by way of specific performance of agreement to sell dated 03.05.2023 in respect of land

**CR No. 3630 of 2024**

measuring 3 *kanal* was filed by him. Though, defendant had claimed herself to be in possession of specified portion of 3 *kanals* of land agreed to sell by her, but petitioner went to the spot and he found actual possession of defendant only on 1 *kanal* 14 *marlas* of land and, therefore, he made alternative prayer in the suit for specific performance that if defendant is not found to be in possession of 3 *kanals* of land, then specific performance be granted in respect of that portion of land which was in possession of respondent-defendant.

3. Learned counsel for the petitioner contends that in the written statement defendant did not dispute the execution of the agreement but claimed that she will execute the sale-deed regarding the entire 3 *kanals* of land and it was in these circumstances that an application under Order 26 Rule 9 CPC was moved for demarcation of the suit property. Learned counsel further contends that as defendant is not in possession of 3 *kanals* of land which he agreed to sell, therefore, demarcation of the property was necessary in order to know as to on how much portion defendant is in actual possession, so that effective decree for specific performance can be passed in respect of that portion.

4. Opposing the petition, it is submitted by counsel for the respondent that agreement to sell was with regard to 30/53 share of the defendant in the total land measuring 5 *kanals* 6 *marlas* and it is not disputed by plaintiff-petitioner that defendant-respondent is co-sharer to that extent. Learned counsel contends that defendant-respondent is still ready to execute the sale deed in respect of land which she agreed to sell to plaintiff-petitioner and, therefore, petitioner cannot claim appointment of local commissioner to know the actual physical possession of the defendant-respondent. He justified the order passed by the trial Court declining the application for appointment of local commissioner and prayed for dismissal of the present revision petition.

5. This Court has considered the submissions of both the sides and have appraised the record.

**CR No. 3630 of 2024**

6. Perusal of the agreement to sell (Annexure P-6) would reveal that defendant claimed to be owner of 3 *kanals* of land i.e. 30/53 share in the total land measuring 5 *kanals* 6 *marlas* comprised in *khasra* No. 138//23/2/1/1-6, 146//3/1/4-0 forming part of *khewat* No. 99 *khatoni* No. 141 as per *jamabandi* for the year 2019-20 situated at Jaitu. She agreed to sell the said property to the plaintiff for consideration of Rs.13,50,000/-. It was further mentioned in the agreement that vendor was in possession of the land with following details:-

East : Road ;
West : Jagmit Singh, Gurjit Singh;
North : Sunita Rani;
South : Jagmit Singh, Gurjit Singh

and it was submitted that it would be given to the purchaser at the time of sale-deed.

7. The aforesaid terms of the agreement would reveal that defendant had agreed to sell her 30/53 share in the total land measuring 5 *kanals* 6 *marlas* though of course she had claimed to be in possession of specific portion.

8. The contention of learned counsel for the petitioner though is that the property, the boundaries of which are mentioned in the agreement, is 3 *kanals*, but this entire property does not form part of *khasra* No. 138//23/2/1/1-6, 146//3/1/4-0 comprised in *khewat* No. 99 *khatoni* No. 141 as per *jamabandi* for the year 2019-20 situated at Jaitu and rather it is only 1 *kanal* 14 *marlas* which exists at the spot, out of the bounded property and therefore demarcation was necessary.

9. This Court does not agree with the contention raised by learned counsel for the petitioner. Though, respondent No.1 claimed to be in exclusive possession of a specific portion of the property, but even the sale of specific portion of the property is to be considered as sale of share only. It has not been disputed by plaintiff-petitioner that defendant has

**CR No. 3630 of 2024**

30/53 share in the total land measuring 5 *kanal* 6 *marlas* forming part of *khasra* No. 138//23/2/1/1-6, 146//3/1/4-0 comprised in *khewat* No. 99 *khatoni* No. 141, which she has agreed to sell. In case the defendant is found to be not in actual physical possession of 3 *kanals* of land of the aforesaid *khasra* numbers, the plaintiff would of course be entitled to get the said share by way of partition proceedings with other co-sharers, as has been rightly observed by the trial Court. Simply because that it will necessitated the petitioner to seek partition amongst the co-sharers, the same cannot be made ground for appointment of local commissioner. It is noticed that by way of agreement dated 03.05.2023 the plaintiff has agreed to purchase the share of the defendant in the suit property.

10. Consequent to the above discussion, this Court does not find any illegality or perversity in the impugned order and as such the present revision petition is dismissed.

(DEEPAK GUPTA)
JUDGE

13.05.2025

Jiten

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No