

**IN THE COURT OF MEETA KOHLI, (UID No.HR0337) ADDITIONAL
CIVIL JUDGE (SR. DIVN.), PALWAL.**

Application for additional evidence

Present: Sh. R. S. Dagar Advocate for Plaintiff.
Sh. Atul Mangla Advocate for Defendant No. 1.
Ld. GP for Defendant No. 2 & 3.

ORDER

This order shall dispose of an application for additional evidence filed by applicant-plaintiff.

2. Briefly stated facts of the application are that the defendant no. 1 has filed objections qua L.C. report and has denied the presence of their officials during the demarcation of the suit property by the Local Commissioner i.e. Naib Tehsildar, Palwal. To meet out the objections filed by the defendant No. 1 qua L.C. report, it is necessary to examine Naib Tehsildar, Palwal, as witness in the present case. The examination of the Naib Tehsildar, Palwal, is necessary for complete and effective adjudication of the case and no prejudice will be caused to the defendants. Keeping in view of the aforesaid facts and circumstances, the application for examination of L.C. i.e. the Naib Tehsildar, Palwal, as witness may be allowed on such terms and condition which this Hon'ble Court deems fit and proper. Hence this application.

3. Defendant no. 1 filed reply to the instant application submitting that the present application is not maintainable. A similar application for additional evidence by way of demarcating the property in

question was moved by the plaintiff, which was allowed by the court and the Local Commission has also submitted his report. The Court gave one opportunity to conclude the additional evidence and the plaintiff has already got recorded the statement of Patwari in the Court in additional evidence and as such, there is no question of any further additional evidence. The present application has been moved just to cause further delay in the decision of the present case. It is pertinent to mention here that the case is pending since 2018, and the plaintiffs have not concluded their evidence for the reasons best known to the plaintiffs. If Naib Tehsildar was a necessary witness then the plaintiff should have got his statement recorded at the place of Patwari. It is further submitted that no notice was issued to NHAI by the Local Commissioner nor any person was present there on behalf of NHAI. The demarcation done by the Naib Tehsildar is bad in law. It is already mentioned in the objections filed by the NHAI on the court record. The present application is uncalled for and has been moved just to cause further delay to the decision of the present case. It is pertinent to mention here that the case is pending since 2018 and six years have been passed but the plaintiff is not concluding his evidence for the reasons best known to the plaintiff. Denying other averments it is prayed that application be dismissed with special cost.

4. No reply was filed on behalf of defendant no. 2 and 3 despite availing several opportunities.

5. I have heard the arguments advanced by the learned counsel's for all parties and have perused the case file carefully.

6. In *Gurdev Singh and others vs. Karnail Singh and others 2016(1) PLR 264* it was held that - "Court becomes functus officio only after pronouncing the judgment. In view of the nature of controversy involved in the case, it is necessary to give reasonable opportunity to the defendant to produce relevant material on record. The Court may allow the defendant to produce relevant documents in order to pronounce the judgment in just and appropriate manner and also for any such substantial cause, the Court may allow such production of document by way of additional document."

7. After considering the rival submissions and perusal of record it is clear that by filing the present application, plaintiff is seeking the permission to examine the Naib Tehsildar, in additional evidence. As per record the present suit has been filed by the plaintiff seeking declaration regarding his ownership and possession of the suit property and to strike off the name of defendant No. 2 from the revenue record qua the suit land comprised in Rect No. 215 Killa No. 37. Ld. Counsel for the plaintiff had submitted that Naib Tehsildar had submitted his demarcation report in this case and the defendant no.1 have filed objections regarding same and therefore, it has become necessary to examine the local commissioner in present case.

8. The present case is at the stage of rebuttal evidence, if any, and arguments. The evidence of plaintiff was concluded in this case on 27.11.2019 and evidence of defendant was concluded on 24.08.2022. Thereafter, the witnesses of plaintiff were re-examined as the exparte order against the defendant no.2 was set aside and the plaintiff has also examined the patwari in additional evidence. However, the report of local commissioner was filed in this case the objections regarding same has been filed by defendant no.1 and now plaintiff want to examine the local commission. No prejudice is going to be caused to the defendants, if one opportunity is granted to plaintiff to examine the local commissioner i.e. Naib Tehsildar in additional evidence, rather it will help in the decision of the case on merits, as the witness sought to be examined is official witness, who had to depose only about the demarcation of suit property conducted by him and the defendants will also get an opportunity to cross-examine him. The inconvenience caused to other party can be compensated with costs. Hence, without commenting upon merits instant application is allowed and plaintiff is granted one effective opportunity to examine Naib Tehsildar, Palwal, in additional evidence, subject to payment of costs of Rs. 1,000/-by the plaintiff to the defendant no.1. It is hereby clarified that only one effective opportunity will be granted to the plaintiff to examine local commissioner concerned. Nothing discussed herein above shall have bearing on the merits of the case.

Announced:
01.03.2024
Meenu, Steno. Gr. III

(Meeta Kohli)
ACJ(SD), Palwal
UID No. HR0337

Note : All 5 pages of this order are checked and signed by
me.

(Meeta Kohli)
ACJ(SD), Palwal
UID No. HR00337

Meeta Kohli,
ACJ (SD), Palwal, 01.03.2024
UID No. HR00337

Present: Sh. R. S. Dagar Advocate for Plaintiff.
Sh. Atul Mangla Advocate for Defendant No. 1.
Ld. GP for Defendant No. 2 & 3.

Arguments on application seeking permission to lead additional evidence u/s 151 Cr.P.C. heard. Order pronounced. Vide my separate order of even date the application is allowed and plaintiff have granted one opportunity to examine Naib Tehsildar, Local Commissioner in additional evidence, subject to payment of cost of Rs. 1000/- to the defendant. Now to come up on **11.03.2024** for plaintiff's evidence at own responsibility. D.M. be paid within 2 days.

Date of Order: 01.03.2024
Meenu, Steno. Gr. III

(Meeta Kohli)
ACJ(SD), Palwal
UID NO. HR0337