

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1197 of 2013
Date of Decision : 12.01.2015

Dalip Kumar

....Petitioner

Versus

Amarjeet Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

Present: Mr. J.K. Goel, Advocate
for the petitioner.

Mr. Kanwardeep, Advocate
for respondent no. 1.

Mr. R.S. Kundu, Addl. A.G., Haryana
for respondent no. 2.

R.P. Nagrath, J. (Oral)

The instant revision has been filed under Article 227 of the Constitution of India seeking to set aside the order dated 02.02.2013 passed by the trial Court whereby application for appointment of Local Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure (CPC) and to visit the spot and report about the actual and factual position about the street and existing position of the drain was dismissed.

According to learned counsel for respondent no. 1, the drain is still running at the spot.

In the impugned order, learned trial Court has observed as under:-

“A perusal of the material on record reveals that the present suit was filed by the applicant/plaintiff on 11.12.2009 and the present application has been moved

*by the applicant/plaintiff on 22.05.2012. Thus, before the present application was moved by the applicant/plaintiff, he has already availed numerous i.e. almost 15 opportunities to lead his evidence and to prove his case. Moreover, the application qua appointment of Local Commissioner to know the actual and factual position existing at the spot must be filed at the earliest opportunity i.e. when the suit is at the initial stage so that what was the actual and factual position existing at the spot at the time of filing of the suit can be assessed. Now at the belated stage of the suit i.e. almost after more than 2 ½ years of filing the present suit, it does not seem proper that the appointment of Local Commissioner will assist the court in any manner. Besides this, the contention of the learned counsel for the applicant/plaintiff that the defendant himself in para no. 4 of the written statement has stated that site plan attached by the plaintiff is not correct and Local Commissioner may be appointed, is also not sustainable in view of the fact that the said contention is only qua the site plan which is to be proved by the applicant/plaintiff. Moreover, the appointment of the Local Commissioner is discretionary remedy and if the court deems it fit only then the Local Commissioner can be appointed. In the present case, there is nothing on the record to show the necessity of appointing the Local Commissioner at this stage of the suit when the case was already fixed for DWs by granting last opportunity. Moreover, even in his application also no encroachment during the pendency of suit has been alleged by the applicant/plaintiff and therefore, the authority cited in case of **Smt. Daya Sharma and another Vs. Suraj Mani, 2011 (3) CCC 103 (HP)**, is not applicable to the facts and circumstances of the present case. Other authorities cited by the learned*

counsel for the applicant/plaintiff are also not applicable to the facts and circumstances of the present case.”

After hearing learned counsel for the parties at considerable length, I find that from the allegations made in the application the trial Court was quite justified in refusing to appoint local commissioner.

The instant petition is, therefore, dismissed with liberty to the petitioner to move appropriate application with specific assertions which may necessitate the appointment of local commissioner. If such application is moved within two weeks from today before the trial Court, the trial Court would proceed to decide the same expeditiously and in accordance with law. The liberty aforesaid would not have any bearing on merits of the application.

January 12, 2015
jk

(R.P. NAGRATH)
JUDGE