

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.1562 of 2015
Date of Decision: 04.03.2015**

Ishwar Dutt Sharma

...Petitioner

Versus

Jai Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vikram Singh, Advocate for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 13.02.2015 whereby, application moved by the petitioner under Order 26 Rule 9 of the Civil Procedure Code, 1908 (hereinafter referred to as 'CPC'), for appointment of Local Commissioner, was dismissed.

Learned counsel for the petitioner has submitted that the petitioner has got the land demarcated from the retired Tehsildar before filing the suit but the same was objected by the defendants on the ground that the demarcation has been conducted in their absence. Hence, it would be very necessary in the interest of justice to appoint a Local Commissioner to demarcate the land and to report as to who was in actual possession of the land in question.

Order 26 Rule 9 of the C.P.C. read as under:-

Commissions to make local investigation:-

"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”.

As per the above provision Court is empowered to issue commission to make local investigation which may be required for the purpose of elucidating any matter in dispute. The object of appointment of Local Commissioner is not to collect the evidence on behalf of any of the party as the same is to be led by the parties before the Court but the purpose is to obtain such evidence from its peculiar nature can only be had on the spot with a view to elucidate any point, which is left doubtful on the evidence produced before the Court.

In the present case, petitioner has filed a suit for possession. Now by moving an application for appointment of Local Commissioner, petitioner virtually wants the trial Court to collect evidence on his behalf. Rather the plaintiffs are required to prove their possession over the property in question by leading their evidence and cannot seek Court's help to collect evidence on their behalf. In the facts and circumstances of the present case, the trial Court has rightly dismissed the application moved by the plaintiffs for appointment of Local Commissioner.

No ground for interference is made out.

Dismissed.

March 04, 2015

Manoj Bhutani

**(SABINA)
JUDGE**