

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CR 1925 of 2015

Date of decision:- 19.3.2015

Mohanjit Singh

Petitioner

vs.

Gagandeep Singh Grewal and ors

Respondent

Present: Mr. LS Sidhu, Advocate.

M.M.S.BEDI,J.

The petitioner in his suit for permanent injunction had moved an application under Order 26 Rule 9 CPC claiming that he had cultivated the suit land and has sown Barseen in 2 kanals and in the remaining area of 14 kanals, he has sown wheat crop about one month prior to the application and had irrigated the land with the tubewell water. In order to substantiate the said fact, he sought appointment of a Local Commissioner. The said application has been dismissed vide impugned order dated 11.2.2015 observing that the Local Commissioner cannot be appointed to enable a party to create or collect evidence.

Learned counsel for the petitioner has challenged the impugned order by relying upon judgment in **Fateh Singh Saini vs. State of Haryana and others 1987 PLJ 351**, in which the High Court in the exercise of revisional jurisdiction had set aside the order passed by the civil court declining to appoint a Local Commissioner. The power of a Court to appoint Local Commissioner is not disputed but at the same time the judgment cited by counsel for the petitioner is not applicable to the facts of

the present case as it is observed therein that the order of appointment of Local Commissioner would be valid if the matter is such that it cannot be satisfactorily proved by other evidence. In the present case the injunction is being claimed by the plaintiff being a co-owner in exclusive possession of a co-owned land. The said plea can be substantiated by producing revenue record and other material. The discretionary order passed by the civil court refusing to appoint a Local Commissioner to create evidence for the petitioner, does not warrant interference.

Dismissed without prejudice to the right of the petitioner to establish his exclusive possession by other means, as per the provisions of law.

March 19 , 2015
TSM

(M.M.S.BEDI)
JUDGE