

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

**CR No.252 of 2014 (O&M)
Date of decision: 6.10.2015**

Daya Ram

..... Petitioner

Versus

Municipal Committee, Haily Mandi and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Amit Jain, Advocate for the petitioner.

None for respondent No.1.

Mr. Jaivir Yadav, Advocate for respondents No.2 to 4.

ARUN PALLI, J. (Oral)

Vide order being assailed dated 1.11.2013, rendered by the Civil Judge (Jr. Divn.), Pataudi, application moved by the petitioner/plaintiff for appointment of Local Commissioner has since been dismissed.

The conclusion arrived at in this regard reads as thus:-

“After hearing the contentions raised by learned counsel for the parties and after having gone through the record very carefully, this Court is of the considered view that the core of controversy between the parties is with respect to 12 feet wide rasta. In the instant application, the plaintiff has specifically alleged that the

defendant No.2 has encroached over the said rasta. Though, the issue of encroached rasta can be settled through demarcation but in the present case in absence of any description of the alleged rasta and the plot of defendant No.2 no demarcation can be conducted. In other words, in the present case, the plaintiff has not given any description of the alleged rasta and the plot of the defendant No.2 either in the plaint or in the instant application. Therefore, in the absence of a identity of the disputed land, no demarcation cannot be conducted”.

Ex facie, the ground upon which the trial Court declined the prayer of plaintiff was that though the issue of encroached rasta could be settled through demarcation but he had failed to give the description of the alleged rasta as also the plot of defendant No.2, in the application and, thus, no demarcation could be conducted. And so was the position even in the plaint. Though, learned counsel for the petitioner maintains that description of the disputed property was duly depicted in the plaint, and the site plan appended there with. Be that as it may, the fact remains that the application moved by the petitioner was bereft of the required description of the rasta as also the plot of defendant No.2. That being so, petitioner could always move another application under Order 26 Rule 9 of the Code of Civil Procedure with due description of the disputed property and other requisite details. Needless to assert, even now if any such application is moved by the petitioner, the same shall be considered and decided by the trial Court in accordance with law.

In the wake of the position as set out above, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India. The petition being devoid of merit is accordingly, dismissed.

However, this order shall not constitute any expression of opinion on the merits of the claim of either party.

October 06, 2015

Manoj Bhutani

**(ARUN PALLI)
JUDGE**