

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 3297 of 2015

Date of Decision: July 6 2015

Soudagar Ram etc.

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

-.-

Present:- Mr.M.K. Sajjan, Advocate
for the petitioners.

-.-

M.M.S. BEDI, J. (ORAL)

The plaintiff-petitioners have filed this revision petition against order dated April 17, 2015 dismissing the application for appointment of Local Commissioner in their suit for injunction.

Counsel for the petitioners has submitted that the plaintiffs have constructed a house in Khasra No. 231 (1-11), 232 (1-2) and 233 (1-0). Being in possession of the same, claiming that wrong demarcation having been conducted, the appointment of Local Commissioner is required.

The trial Court has dismissed the application on the basis of the plea of Gram Panchayat and other defendants taken up in the written

statement to the effect that the plaintiffs have, as a matter of fact encroached upon a chappar area in Khasra No. 199 (7-8) and that in the garb of the present suit, they want to retain the possession of the said plot. The demarcation report dated July 24, 2009 pertaining to the property in dispute has been relied upon by the defendant- respondents.

Learned counsel for the petitioners has vehemently contended that in the interest of justice, the appointment of Local Commissioner in the present case for permanent injunction is necessary. He has placed reliance on **Varala Ramachandra Reddy Vs. Mekala Yedi Reddy and ors.**, (2010) 4 SCC 453 (AP), in support of his contention to contend that in a suit for permanent injunction, civil Court is competent to appoint Local Commissioner to survey and for demarcating the land.

I have heard learned counsel for the petitioners. So far as khasra numbers mentioned in the headings of the plaint are concerned, it appears that the defendant- respondents have got no contest but it has been made specifically clear that an ejectment order has already been passed against the petitioners pertaining to Khasra Numbers 199 measuring 7 kanals 8marlas as per demarcation report dated July 24, 2009.

Since the defendant- respondents are not claiming to forcibly interfere in the khasra numbers mentioned in the heading of the plaint and have shown their interest only in khasra No. 199 measuring 7 kanal 8 marlas which is the subject matter of ejectment order dated September 5, 2014, the trial Court has rightly dismissed the application for appointment of Local

Commissioner. The ratio of the judgment cited by counsel for the petitioners is not applicable to the facts of the present case. There is no controversy that a Civil Court has jurisdiction to appoint Local Commissioner but where such an application is considered to be suffering from the vice of malafide with an intention to wriggle out of any liability and to divert the attention of the Court to a controversy pertaining to a land which is not subject matter of dispute with an oblique motive to lay claim on some other property. It is always open to the trial Court to dismiss application for appointment of the Local Commissioner. It is also not out of place to mention here that report of Local Commissioner has already been relied upon by the defendants.

Petition is dismissed. It is, however, observed that in case the trial Court, at any stage, is of the opinion that in the interest of justice it is expedient to identify the property for fair adjudication, it will always be open to the Court to appoint Local Commissioner at the opportune time.

July 6 2015
sanjay

(M.M.S.BEDI)
JUDGE