

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.3216 of 2013
Date of decision: 17.11.2015

Avinash Kaur

.....Petitioner

versus

Harbhajan Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sunil Agnihotri, Advocate for the petitioner
Mr.Vishal Munjal, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 30.7.2012 (Annexure P6), passed by the learned Civil Judge, Junior Division, Dasuya, vide which, in the proceedings under Order 21 Rule 32 CPC, the lower Court has refused to appoint the Local Commissioner to see whether the respondent is in possession or the plaintiff decree holder has been dispossessed.

I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of the impugned judgment and decree shows that a decree was passed whereby the defendants were restrained from dispossessing the plaintiffs from portion of the house marked as

'ABCD', whereas the counter claim of the defendants was also allowed and the plaintiffs were restrained from interfering and dispossessing the defendants from the portion marked CDEF in the disputed house.

Now the execution has been filed by the plaintiffs, stating that they have been dispossessed. It is to be noted here that parties are closely related to each other. Defendant No.1 is none other than the husband of the plaintiff and the father of plaintiff No.2. The lower Court has taken the view that Court is not supposed to collect the evidence on its own by sending local commissioner at the spot. However, in this case, the position is different. In a apparent a family dispute, cross injunctions were granted in the same suit. Now the complaint of the plaintiffs in the said suit is that the decree has been violated and they have been dispossessed from the portion marked ABCD. In these circumstances, it is the duty of the Court to see that the decree passed by it is being respected and complied with by both the parties. It is not the case of collection of evidence but the enforcement of the decree. Any third person will not be allowed to enter the house without the prior permission of the Court. Therefore, in these circumstances, the lower Court should have appointed the Local Commissioner to see whether the decree is being complied with or not?

In these circumstances, the impugned order is set aside. The lower Court is directed to appoint a Local Commissioner, who shall visit the spot and report whether the plaintiffs decree holders have been dispossessed from the portion marked ABCD in the house

or not? Needless to say that the lower Court shall also fix the remuneration of the Local Commissioner and the date and time when the Local Commissioner is to visit the spot.

The revision petition stands allowed accordingly.

17.11.2015

gk

**(Kuldip Singh)
Judge**