

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

**CM No.20848-CII of 2015 in
CR No.4035 of 2015
Date of decision : 15.10.2015**

Roshan Lal

.... Petitioner

Versus

Jai Singh & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. S.K.Yadav, Advocate
for the petitioner.

K.Kannan, J. (Oral)

CM No.20848-CII of 2015

For the reasons mentioned in the application, same is allowed. The application bearing CM No.18606-CII of 2015 and revision petition is restored to their original number and are taken up for motion hearing.

CM stands disposed of.

CR No.4035 of 2015

The petitioner, who is plaintiff, has filed objections to the Commissioner's report. The Court has rejected the objections and the plaintiff-petitioner is before this Court.

The Trial Courts are under severe strain for paucity of time and it is essential for the Courts to adopt practices which allow for their smooth functioning without faltering the course of trials in any way. If an objection to local commissioner's report is made, the Court will examine the objection along with other evidence by allowing parties to give evidence as regards the Commissioner's report and if need be to examine the local commissioner himself to elicit the

objections raised by the parties. It is important to remember that the local commissioner is not to be understood as witness for anyone party. The provisions of Order 26 Rule 9 that allows a person for inspection of the property and give a report shall be understood in such a way that the Commissioner shall be seen as an extended arm of the Court and hence an officer of the Court. If neither of the parties have any objection to the report, the Court will simply act on the report to the extent that the report is relevant for adjudicating on the controversy involved in the suit. However, if there is any objection to the Commissioner's report, it will be considered by the Court only to satisfy itself whether the objection must prevail and if it holds so, it will be competent to reissue the commission to the same local commissioner or under extra-ordinary circumstances, opt for another local commissioner to be issued after scrapping the first report. The attempt must be to ensure that there are no two conflicting versions through two different reports.

If second local commissioner was to be issued, it shall be under all or any of the following circumstances:

- (i) The first commission report is erroneous on material facts;
- (ii) Some new events have taken place that require further examination and collection of evidence;
- (iii) The Court requires any clarification in the report, which is not comprehensive or which is found vague or found deficient in the full particulars of the report.

If the Court takes a decision that an objection given to the Commissioner's report cannot be entertained and Court passes such an order, it shall do so on consideration of all the material facts that

are brought out in the objection to the Commissioner's report. If the objection is such that it cannot be disposed of without affording oral evidence to be given, the best course open shall be not to pronounce on the objection and allow for evidence of parties to come on record and issue appropriate directions, if it only finds a fresh Commission is required to be issued. In all other cases, the court shall reserve its own findings till the conclusion of the trial and give its reasons for rejecting any objection to the report in the judgment.

I have outlined the above procedure only to ensure that the trial of a court is not obstructed by parties by filing objection to a report and invite orders to be passed on such objections. This only would make possible for parties to come up on revision and hold up the trial work.

Under the circumstances, I decline to make intervention at this time and leave the party to offer evidence on matter relevant for consideration of the objection to the Commissioner's report and help the Court assess whether a fresh commission is necessary or not before the final judgment is passed. The Court will also be at liberty to examine the local commissioner on its own, if the parties are not prepared to examine the Commissioner and the Court requires any clarification in the light of objection to the Commissioner's report.

The revision petition is disposed of with above observations making, however, no intervention to the order already passed but leaving it open to the trial court to consider the objection filed by the petitioner in the manner referred to above.

15.10.2015
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(K.KANNAN)
JUDGE