

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 3865 of 2014
Date of Decision: 06.07.2015.**

Nirmal Jindia

.....Petitioner

Versus

Sewa Singh @ Prince

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Saurabh Arora, Advocate
for the petitioner.

Mr. S.K.Sandhir, Advocate
for the respondent.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 11.3.2014 (Annexure P-6) whereby application moved by the petitioner for appointment of a Building Expert as Local Commissioner, was dismissed.

Learned counsel for the petitioner has submitted that the Trial Court had erred in dismissing the application moved by the petitioner as premature. In fact, at an initial stage of the trial also, Local Commissioner could be appointed by the Trial Court. In support of his arguments, learned counsel for the petitioner has placed reliance on '**Habibkhan s/o Inauttalakhan and others versus Waman s/o Govind Rathod and others, 2012(2) CivCC 545**', wherein it was held as under:-

“5. The disputes regarding the boundaries can be best

*adjudicated by taking the assistance of the experts such as T.I.L.R., who on measurement can express his opinion. The Apex Court in a case of **Haryana Wakf Board v. Shanti Sarup and others reported in 2008(8) SCC 671** and the learned Single Judge of this Court in a case of **Kolhapuri Bandu Lakade v. Yellapa Chinappa Lakade (since deceased) through LRs Puja about Pujari Y. Lakade and others reported in 2011(3) Mh.L.J. 348** have held that in case regarding boundaries and area, an expert person can be appointed as a Commissioner for measurement of the properties. In the present case, the plaintiff has prayed for appointment of Commissioner to measure the property of the plaintiff as well as the defendant, which has been allowed.”*

Learned counsel for the petitioner has next placed reliance on '**Alark Singh versus Smt. Durga Devi, 1999(3) R.R.R. 285**', wherein it was held as under:-

“14. Local investigation can be ordered at an early stage also but it depends upon nature of the controversy involved in the suit. If the dispute is simply in respect of identification, location and measurement of land or premise or object, which can be best ascertained on the spot instead of adducing evidence, local investigation should be ordered at an early stage so that parties are aware of the report of the Commissioner and go to trial prepared. The dispute in the present case is not of that nature and the purpose of filing the present application

seems to be to collect evidence which the plaintiff should produce in the Court. Local investigation cannot be ordered to collect evidence for either party.”

Learned counsel for the respondent, on the other hand, has submitted that at this stage, there is no material on record to suggest that the wall in question was 9” thick as alleged by the plaintiff. In fact, the intervening wall between the shops was 15” thick. The plaintiff had reduced the said wall by 9” from his side but had later reconstructed the same to the extent of 5”. By doing so, the plaintiff had encroached upon 4” of the wall from her side.

In the present case, petitioner has filed suit for permanent injunction. The case of the petitioner is that the intervening wall between the two shops was 9” thick and had been reduced by the defendant to 4”.

However, on the other hand, the case of the respondent is that in fact, the wall in question was 15” thick and the plaintiff had demolished the same and had encroached upon 4” space from her side.

The parties are to lead their evidence in respect of their respective pleas. At this stage, the plaintiff could not seek the help of the Court to collect evidence on her behalf. Plaintiff is required to lead evidence in the affirmative that the wall in question was initially 9” thick and its thickness had been reduced by the defendant.

In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner. The Trial Court had, thus, rightly dismissed the application moved by the petitioner for

appointment of Local Commissioner.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

July 06, 2015
Gurpreet