

111

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

CR No.4368 of 2015

Date of decision: July 14, 2015

Gurcharan Singh and another

.....Petitioners

Versus

Gurnam Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S. Momi, Advocate
for the petitioners.

SABINA, J

Petitioner has filed this petition challenging the order dated 16.03.2015, whereby, application moved by the petitioner for appointment of local commissioner, was dismissed.

Learned counsel for the petitioner has submitted that the respondent had made a statement on 02.04.2013 that he would not make any encroachment on Khasra No.343 (Rasta) and will not raise any construction. In case, during demarcation, any encroachment is found, then he would immediately remove/demolish the same. Hence, it was very necessary in the interest of justice to appoint local commissioner for demarcation of Khasra Nos.342/343.

Order 26 Rule 9 of Code of Civil Procedure, 1908 ('CPC' for short) reads as under:-

“Commission to make local investigations.- In any suit in which the Court deems a local

investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any meson profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.”

Thus, as per above provision, the Court has ample power to appoint local commissioner to make local investigation, which is necessary for the purpose of just decision of the case. However, the object of local investigation is not to collect the evidence on behalf of either party, but the purpose is to obtain such evidence, which from its peculiar nature, can only be had on the spot with a view to elucidate any point which is left doubtful on the evidence produced before the Court.

Petitioners have filed suit for permanent injunction.

The prayer clause reads as under:-

“It is, therefore, prayed that a decree for permanent injunction restraining the defendants from encroaching upon the land of Rasta A to B and to C comprised in khasra Number 343 and 342 or obstructing the work of making it pucca by way of raising construction over the land of RASTA or interfering in any manner in making RASTA pucca be passed in favour of plaintiffs and against the defendants.”

A perusal of the plaint (Annexure P-2) reveals that the case of the petitioners is that defendant No.1 wants to

encroach upon the passage in dispute by raising construction. Thus, the case of the petitioners is that the defendants be restrained from encroaching upon the property in dispute. It is not the case of the petitioners that the defendants have already encroached upon the passage in dispute. In these circumstances, the learned trial Court rightly held that at this stage, it was not necessary to appoint local commissioner for demarcation purposes. Moreover, the petitioners cannot use the Court process for collecting evidence on their behalf.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

July 14, 2015

m.singh