

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

Civil Revision No.4232 of 2014

Date of decision: 17.03.2015

Nanak Chand

... Petitioner

versus

Ranjeet and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. S.K. Verma, Advocate,
for the respondents.

K.Kannan, J. (*Oral*)

1. The petition for appointment of a Commissioner was rejected in a case where both parties were claiming under the same vendor and the plaintiff was pleading that there was a *rasta* in the property in suit whereas the defendant was denying the same. The court found that the existence of the *rasta* was not brought out in the sale deed and the plaintiff cannot procure evidence by the appointment of a Commissioner. The counsel for the respondents says that the revision itself is not maintainable as the courts have held that an intervention in an order under Order 26 Rule 9 CPC will not be done in revision.

2. If the court has ordered notice in revision that requires an adjudication of whether the Commissioner could be appointed or

not, the most predominant concern for the court is whether any serious prejudice will be caused if a prayer sought for is declined. The ascertainment of nature of property or examining the physical features are the best methods of securing the evidence which is brought in court and no prejudice could be caused if the Commissioner is appointed. The cost of the Commission will be borne only by the plaintiff irrespective of the result of the case. No part of the same shall be mulcted on the defendant who opposes the plea.

3. The power under Article 227 of the Constitution will be invoked by every time when the ends of justice would be made by passing a particular order by judicial intervention. I deem it appropriate for securing such ends of justice.

4. The order passed is set aside and the revision petition is allowed on the above terms. The Local Commissioner will be appointed by the court below who will examine the physical features obtained on the property identified as a suit property and file a report. Needless to state that the party will have an opportunity to state his objections on the report and the court will consider the same in accordance with law.

(K.KANNAN)
JUDGE

17.03.2015
sanjeev