

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 4245 of 2014
Date of decision: -14.8.2015

Ashok Kumar

.....Petitioner.

vs.

Smt. Rani

.....Respondent.

CORAM: - HON'BLE MR. JUSTICE KULDIP SINGH

Present: - Mr. Akshay Kumar Goel, Advocate for the petitioner.

Mr. Raminder Chauhan, Advocate for
Mr. N.P.Singh, Advocate for respondent.

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KULDIP SINGH, J. (Oral)

Impugned in the present revision petition is the order dated 23.4.2014 passed by the learned Civil Judge (Junior Division), Bhiwani whereby the Local Commissioner was appointed to determine the existing position of the house in dispute i.e., on which plot the house has been constructed.

The brief facts of the case are that a suit for specific performance has been filed by the plaintiff on the basis of agreement to sell dated 17.11.2011. It was during the pendency of the suit that a Local Commissioner was appointed. It was stated in the application that the defendant had illegally constructed the house on Khasra No. 52//12/2 and 19/1 which is owned by Raju son of Jagmal and wrongly mentioned the boundries of the house constructed on khasra No.52//12/2 of 19/1 of the house in question in agreement showing the boundries of khasra No.52//11/2 (4-11).

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After going through the records of the case, I am of the view that there is no illegality or infirmity in the order impugned in the present petition. Before passing the decree for specific performance agreement, the Court can always examine as to whether the defendant is the owner of the property which is sought to be sold through agreement to sell.

Keeping in view the averments that the house was alleged to be partly constructed on some other property; it is necessary to determine the said fact so as to pass an effective decree which can be later on executed. It will avoid the complication at the later stage. The act of the Court cannot be called collection of evidence on behalf of one or the other party. It is necessary in the interest of justice to determine the ownership of the defendant before passing the said decree. The trial Court has rightly exercised its discretion.

Hence, there is no ground to interfere in the impugned order in the exercise of revisional jurisdiction of this Court.

Dismissed.

(KULDIP SINGH)
JUDGE

14.8.2015
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