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

CR No.4573 of 2015

Date of decision: July 23, 2015

Angrej Singh

.....Petitioner

Versus

Naresh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.M. Sharma, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 11.05.2015, whereby, application moved by the petitioner for appointment of local commissioner, was dismissed.

Learned counsel for the petitioner has submitted that the trial Court has erred in dismissing the application moved by the petitioner for appointment of local commissioner. In fact, it was very necessary to get the suit property demarcated from the local commissioner. In support of his arguments, learned counsel has placed reliance on ***Deepak Narula versus Shri Satruhan Dwivedi and others***, 2014 (2) PLR 167, wherein, it was held as under:-

“When an injunction is sought through a sale deed with relief of declaration through sale deed containing reference to khasra No. and boundaries and it is sought to be contended that the defendant was trying to prevent the plaintiff from putting up construction in his own property and the defence was that he was interested in some other khasra number, to identify the property with reference to khasra number obtains a sure relevance. Learned counsel for the

respondent points out to me that in the event of discrepancy between khasra numbers and boundaries, boundaries will prevail. I have no difficulty in accepting the proposition, if the plaintiff had also gone to court to contend that the khasra numbers mentioned in his sale deed and in the plaint were wrong that he was actually making his claim to right with reference to a property that should be identified by boundaries whatever khasra number was. On the other hand, there is no such plea by the plaintiff that there is any discrepancy in his own sale deed or in the description of property in suit, that there exists any discrepancy between khasra numbers and boundaries. If the defendant must be fended off against any interference to the plaintiff, it could be made only if the plaintiff proves his possession in khasra number mentioned in the plaint. The Local Commissioner's report with the assistance of the Kanungo will come a long way to resolve the dispute between the parties.”

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.

In the present case, petitioner has filed the suit praying that decree be passed specifying/demarcating/fixing boundaries by way of constructing boundary walls/fixing of barbed wires etc. in respect of plot measuring 117 sq. yards forming part of khasra No.26//18(2-12). During the pendency of the suit, petitioner moved an application for appointment of local commissioner that the local commissioner visit the spot and demarcate the property in question. By moving the said application, petitioner has virtually sought assistance of the Court to collect evidence on his behalf. Application moved by the petitioner was liable to be dismissed as the petitioner is required to lead his evidence in support of his case and cannot use the Court process for collecting evidence on his behalf. The judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts.

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

Dismissed.

**(SABINA)
JUDGE**

July 23, 2015
mahavir