

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

**CR No.477 of 2015
Date of Decision: 04.03.2015**

Harwinder Kumar

...Petitioner

Versus

Nasib Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vipin Mahajan, Advocate for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 06.08.2014 whereby, application moved by the petitioner under Order 26 Rule 9 of the Civil Procedure Code, 1908 (hereinafter referred to as 'CPC'), for appointment of Local Commissioner, was dismissed.

I have heard learned counsel for the petitioner and have gone through the record available on this file carefully.

Petitioner along with others have filed suit for declaration to the effect that they were owners in possession of the suit land measuring 15 marlas out of total land measuring 2 kanals 7 marlas. During the pendency of the suit, plaintiffs had filed an application under Order 26 Rule 9 of the CPC for appointment of Local Commissioner. The case of the plaintiffs was that they had filed a suit for rectification of the sale deed dated 4.03.1996, by adding khasra No.135R(2-7) before the area 0 kanal 9 marla and for deleting the word *lal laqir* from the said sale deed as the property fell in khasra No. 135R(2-7) and not in *lal laqir*. The said fact had been duly written in the sale deed by the vendor. In order to ascertain the boundaries mentioned in the sale deed, Local Commissioner having revenue background was necessary to

be appointed.

Order 26 Rule 9 CPC read as under:-

Commissions 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 *mesne 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:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules”.

As per the above provision, Court is empowered to issue commission to make local investigation which may be required for the purpose of elucidating any matter in dispute. The object of appointment of Local Commissioner is not to collect the evidence on behalf of any of the party as the same is to be led by the parties before the Court but the purpose is to obtain such evidence 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, plaintiffs by moving the present application are seeking a direction from the Court to collect evidence on their behalf. However, Local Commissioner could not be appointed to collect evidence on behalf of the plaintiffs. In the circumstances of the present case, learned trial Court has rightly dismissed the application moved by the plaintiffs for appointment of Local Commissioner.

No ground for interference is made out.

Dismissed.

March 04, 2015

**(SABINA)
JUDGE**