

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5297 of 2015
Date of decision: 19.08.2015

Ram Dulara

... Petitioner

Versus

Tarsem Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Surinder Singh Duhan, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 07.07.2015 (Annexure P5), rendered by the Additional Civil Judge (Sr. Divn.), Moga, the application moved by the petitioner-defendant for appointment of the Local Commissioner, under Order 26 Rule 9 read with Section 151 CPC, has since been rejected.

In an application moved by the petitioner-defendant, it was maintained that as parties to the lis have placed on record their respective site plans in support of their claims, it would be necessary to inspect the disputed premises at site. Thus, a Local Commissioner be appointed to ascertain the veracity of both the site plans as also the factum regarding

possession. In response, respondent-plaintiff opposed the application being not maintainable. Particularly, when the respondent-plaintiff had already led his evidence and proved the site plan that was brought on record.

On a consideration of the matter in issue, the trial court declined the prayer of the petitioner-defendant and concluded as thus:

“Taking into consideration rival submissions of both the parties, this court is of the considered view that correctness of the site plan is to be decided on the basis of evidence led by parties and not by delegating powers of the court to the Local Commissioner. In order to lead evidence qua correctness of the site plan filed by both the parties, issues in the present suit were framed on 11.7.2013. Respondent/plaintiff has already concluded his evidence. Even applicant/defendant has already led his evidence and has examined three witnesses. All the above said witnesses of defendant have admitted site plan of the respondent/plaintiff to be correct.”

Ex facie, the issue as regards the veracity of both the site plans has to be determined in the wake of the evidence led by the parties. Likewise, needless to assert, even the fact as to which of the party is in possession of the suit property, also cannot be determined vide a local investigation or appointment of Local Commissioner. But by the court on an analysis of the material and evidence on record. Issues had

already been framed by the trial court on 11.07.2013 and the respondent-plaintiff had even concluded his evidence. So much so, the petitioner-defendant has also examined three witnesses. Therefore, vide this application, petitioner only attempted to fill up certain lacunas and improve upon his case. And of course, to delay and derail the proceedings.

No interference in exercise of revisional jurisdiction is warranted. Petition being devoid of merit is accordingly dismissed.

August 19, 2015
Rajan

(Arun Palli)
Judge