

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

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**Civil Revision No.6610 of 2015(O & M)
Date of Decision:07.10.2015**

Pankaj

....petitioner

Versus

Harcharan Singh & Ors.

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not? YES**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Ravi Sodhi, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Vide order being assailed, dated 24.08.2015, rendered by Additional Civil Judge (Senior Division), Rupnagar, application moved by the petitioner-defendant No.4, for appointment of a Local Commissioner, has since been dismissed.

The conclusion arrived at, in this regard, reads as thus:

"Heard. The perusal of the record shows that plaintiff has filed a suit for permanent injunction restraining the defendant from making any interference or encroachment over the property situated within the MC limits of Roopnagar and in support of his case, plaintiff has adduced his evidence and the case was fixed for evidence of defendants to prove their stand as per

their written statement and the case is still fixed for evidence of defendants when the present application was moved by them, therefore, the thing/fact which can be proved through evidence by a party cannot be entrusted to the Local Commissioner. It is the duty of the defendant to produce evidence in order to prove his stand that at the spot there is a street of the Municipal Council, Roopnagar and he is at liberty to call the evidence from the Municipal Council itself in order to prove the existence of street of the Municipal Council. Moreover, the present suit is for permanent injunction restraining the defendant from interfering into the possession of the plaintiff and through this application the defendants indirectly intends to prove their possession over the property in question and it is well settled that L C cannot be appointed to see the possession of a party."

Concededly, in a suit filed by the plaintiff, he asked for a decree for injunction restraining the defendants from causing any interference in the suit property depicted as ABCD. It was maintained that originally the suit property was owned by custodian department and was later purchased by his father on 27.10.1980 for a valuable consideration. Thus, plaintiff happened to be the owner in possession of the disputed site.

In defence, it was pleaded, inter alia, that property in dispute was actually a street and was used by the defendants as such. Windows and ventilators of their houses opened in the said street. Drains were laid beneath the disputed site by the Municipal

Council, Rupnagar. And even a septic tank was constructed in the site in dispute. Ownership of the plaintiff was thus, denied.

Ex facie, the crucial issue involved for determination is; *Whether the site in dispute is part of the house of the plaintiff or indeed is a public street.* Concededly, the matter is listed for recording the defendants' evidence and petitioner/defendant No.4 is at liberty to make good his defence by adducing appropriate evidence. Certainly, Local Commissioner could not be appointed, for the purpose of collecting evidence in support of his defence. Needless to assert, provisions of Order 26 Rule 9 CPC, postulate; *that only if the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, local investigation can be ordered.*

That being so, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India. The petition being devoid of merit is accordingly dismissed.

07.10.2015

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**(ARUN PALLI)
JUDGE**