

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.6442 of 2014 (O&M)

Date of Decision.11.08.2015

Karnail Singh

.....Appellant

Versus

Chuni Lal

.....Respondent

Present: Mr. Rajeev Dev Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. In a suit for injunction by the plaintiff, the application was filed by the defendant for appointment of a commissioner to note down physical features and particularly existence of gate at a particular place mentioned in the suit. The plaintiff objected to the appointment of a commissioner and the Court reasoned that it is the plaintiff who has to prove his case. There cannot be an appointment of commissioner only to gather evidence. It is the plaintiff who has to establish the case and if the plaintiff does not himself feel constrained to have the property identified or existence of any of the physical features, he will take the consequence and the defendant need not feed any material which the plaintiff does not want. The counsel points out that the Court has found that the suit has been for recovery of possession when it was a suit for injunction by the plaintiff. Even the said observation of the trial Court could not be material, if the ultimate decision could still be supported,

for, the plaintiff cannot be compelled to have appointment of commissioner for noting down the physical features of the property which the plaintiff does not want. He must succeed on the ability to prove his possession and the defendant can take advantage of any lack of evidence which the plaintiff has failed to adduce before the Court below. I do not think that there is any particular prejudice that is involved for the defendant to contend for appointment of commissioner.

2. The revision petition is dismissed.

(K. KANNAN)
JUDGE

August 11, 2015
Pankaj*