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

CR No.6674 of 2013

Date of decision: March 19, 2015

Gurpartap Singh @ Gurpavitar Singh

.....Petitioner

Versus

Jagmeet Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Madan Sandhu, Advocate
for the petitioner.

Mr. P.S. Jammu, Advocate
for the respondent.

SABINA, J

Petitioner has filed this petition challenging the order dated 11.10.2013, whereby application moved by the respondent for appointment of Local Commissioner, was allowed.

Learned counsel for the petitioner has submitted that by moving an application for appointment of Local Commissioner, respondent had virtually sought the assistance of the Court to collect evidence on his behalf.

Learned counsel for the respondent, on the other hand has opposed the petition and has submitted that the local commissioner had only visited the spot and had given the report qua the existing state of affairs.

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, respondent has filed suit for permanent injunction. During the pendency of the suit, respondent-plaintiff moved an application for appointment of Local Commissioner to verify the factum of possession over the shop in question by opening the lock. Thus, by moving the application for appointment of Local Commissioner, respondent-plaintiff had virtually requested the Court to collect the evidence on his behalf qua his possession. The provision under Order 26 Rule 9 CPC cannot be used for the

said purpose. Infact, the plaintiff is required to lead his evidence to establish his possession over the shop in question, but cannot use the Court process to collect the evidence on his behalf. The trial Court had, thus, erred in allowing the application moved by the respondent for appointment of Local Commissioner to report qua the factum of possession over the shop in question.

Accordingly, this petition is allowed. Impugned order dated 11.10.2013 is set aside.

**(SABINA)
JUDGE**

March 19, 2015
m.singh