

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

CR No. 6794 of 2013 (O&M)
Date of decision: March 24, 2015

Chandar Bhan

...Petitioner

Versus

Ram Kumar and others

...Respondents

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?**

Present: Mr. Ajit Sihag, Advocate,
for the petitioner.

None for the respondents.

K. KANNAN, J. (Oral)

1. A Local Commissioner, who was appointed to gather the physical features of the suit property, has given a report and received by the Court. The Commissioner was also examined as a witness (PW.3). After the examination of the Commissioner, the plaintiff has again moved an application for issue of a second commission. The Court has allowed the Commission to be issued. The defendant is revision petitioner complaining of the procedure adopted by the learned judge.

2. If a report of the Commissioner is filed and objections are received from parties, the court may elicit the correctness of the report by allowing parties to cross-examine the Commissioner on the basis of the respective objections. If the plaintiff, who had sought the appointment of the Commissioner, has himself examined the Commissioner also as his witness and elicited the necessary facts relating to the report, the matter

must conclude there unless the court is of the view that the Commissioner has not done the job properly and some more facts would require to be elicited. The court's power to seek for further clarification is different from a party who is dissatisfied with the Commissioner's report. If there is anything erroneous in the Commissioner's report, the court, on the objection taken by any of the parties, may set aside the report and issue a fresh commission or it could be only for clarification in the manner referred to above.

3. There are various trends of decisions regarding the procedure to be followed before a second commission is issued, some courts holding that the first report must be taken as wiped out when the second commission is issued. This court has taken a view in Chotu Vs. Gurbhajan AIR 1972 (P&H) 265 that a first report can not be taken as effaced. There is unanimity in the view that a second commission cannot be issued without a court finding that some issue is required to be clarified, some issue required to be corrected and the court must come to the conclusion that they are not satisfied with the first report. There is particularly no reason given in the order why a second commission was being issued and what is deficient about the first report.

3. The impugned order is set aside and the revision petition is allowed.

March 24, 2015
prem

(K.KANNAN)
JUDGE