

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

CR No.8073 of 2015.

Date of Decision: 01.12.2015.

Raj Kumar and another

....Petitioners.

VERSUS

Amarjit Kaur and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sanjay Gupta, Advocate for the petitioners.

SNEH PRASHAR, J.

This petition under Article 227 of Constitution of India was filed by the petitioners-defendants for setting aside the order dated 17.09.2015 passed by learned Civil Judge (Junior Division), SBS Nagar whereby the application of the petitioners for direction to the Local Commission to revisit the spot was dismissed.

From the pleadings of the petitioners and the impugned order, it transpires that in a suit for permanent injunction filed by the respondents praying to restrain the defendants-petitioners from encroaching upon their private passage by demolishing the wall marked by letters AB and from opening any ventilator, door or window towards the private passage, an application was filed by the petitioners for appointment of Local Commission which was allowed by learned trial Court and one Shri Yudhvir Bajaj, Advocate was appointed as Local Commission. He visited

the spot on 22.08.2014 and submitted his report stating the existing position at the spot. The petitioners then filed an application praying for direction to the Local Commission to submit the report on specific five points which he was required to elucidate relating to the matter in dispute. They intended that the Local Commission should have reported whether the street/passage is laid with RCC; whether there exists sewerage pipeline of the Municipal Council in the street/passage; whether there exists water supply pipeline of the water works department; whether there are street lights of Municipal Council in the passage/street; and whether there exists drains of Municipal Council in the passage/street.

The respondents resisted the application of the petitioners by filing a written reply. Considering the submissions made by learned counsel for the parties, the application was dismissed by learned trial Court vide the impugned order.

Feeling aggrieved by the said order dated 17.09.2015, the petitioners have filed the instant petition.

The submissions of learned counsel representing the petitioners have been considered.

Order XXVI Rule 9 of the Code of Civil Procedure provides for appointment of a Local Commission for making local investigation in any suit in which the Court deems the local investigation to be requisite/proper for the purpose of elucidating the matter in dispute or for ascertaining the market value of any property or the amount of any mesne profits or damages or annual net profit. However, it is a settled law that

Local Commission is not to be appointed for collecting evidence on behalf of either of the parties. Onus to prove the particular facts alleged by a party is on that party and a Local Commission cannot be sought to be appointed for proving the same. The local investigation in a case where the dispute between the parties is with regard to a site can be to inspect the site and report regarding the prevailing position at the spot, so that the ocular and documentary evidence adduced by the parties can be analyzed.

The Local Commission appointed by the trial Court reported about the factual position at the spot. He also took photographs of the site in dispute and attached the same with his report. It was not within the power of the Local Commission to collect evidence and report whether the lights/sewerage/water supply line etc. existing in the street/passage belonged to the Municipal Council or some other department or person.

The issue between the parties is whether the street/passage in question is private passage of the plaintiffs or is a public passage carved/owned by the Municipal Council. It is for both the parties to adduce substantive and reliable evidence to prove their rival contentions and the said matter cannot be left to inquiry/investigation by the Local Commission.

Thus, finding no adversity or perversity in the order of learned trial Court which would call for intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

01.12.2015.
jitender