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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.8608 of 2015

Date of Decision: 18.12.2015

NACHHATAR SINGH

.....Petitioner

Vs

PREM SINGH AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Prashant Bansal, Advocate
for the petitioner.

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?*

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed order dated 26.11.2015 passed by Civil Judge (Jr. Divn.) Rajpura, whereby application moved by the defendants for appointment of Local Commissioner was allowed.

[2]. Land of the plaintiffs is situated adjacent to the lands of the defendants as well as *gair mumkin pahi* bearing *khasra* No.156(2-2) which is the only passage which leads to the land of the defendants, as claimed by the defendants.

[3]. Defendants claimed that the plaintiffs are the wrongdoers and they have encroached upon the land of the defendants and have also encroached upon the land compromised in aforesaid *khasra* No.156(2-2) which is *gair*

mumkin pahi and belongs to the Gram Panchayat.

[4]. Defendants further alleged in the written statement that the aforesaid *khasra* number was got demarcated by *Halqa* Patwari vide report dated 30.04.2013 and factum of encroachment at the instance of the plaintiffs came to fore. *Gair mumkin pahi* is a public passage and they also got conducted demarcation in the land comprised in *khasra* Nos.949/736, 729, 730, 733, 734/2, 736 and 728 situated in village Bakshiwala and in respect of said demarcation, *Halqa* Patwari in his report dated 06.01.2014 clearly mentioned that the plaintiffs have encroached upon some area of the defendants adjoining to their land and they do not allow *Halqa* Patwari to demarcate the land from their side.

[5]. Though it is a well settled law that a Local Commissioner cannot be appointed to demarcate the land for the purposes of collecting evidence for either of the parties, but in view of aforesaid stand taken in the written statement, since the plaintiffs have created obstacle in conducting demarcation by the Local Commissioner from their side of the land, therefore, in order to arrive at just conclusion, the Local Commissioner is required to be appointed.

[6]. Even on earlier occasion the suit land was demarcated by *Halqa* Patwari Surjit Singh and he gave his report dated

30.04.2013 alleging encroachment of the plaintiffs on some portion of *gair mumkin pahi* in question.

[7]. Without commenting upon the evidentiary value of the earlier concluded report, it would be just and expedient to observe that the dispute regarding encroachment between the parties having adjoining lands can only be decided by means of lawful demarcation conducted in respect of plots owned and possessed by such contesting party.

[8]. In considered opinion of this Court, the appointment of Local Commissioner in such a scenario would facilitate the Court to decide the controversy in an effective manner. In any case, the demarcation report after lawful observance of procedure would not create any undue hardship to any of the party, nor it will create any such evidence in favour or against the party, rather such demarcation exclusively remains under the domain of the Revenue Officer.

[9]. Having considered the nature of litigation, there is no error of jurisdiction passed by the Civil Judge, therefore, finding no merit in this case, the same is accordingly dismissed.

December 18, 2015

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**(RAJ MOHAN SINGH)
JUDGE**