

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

**CR No.1564 of 2016
Decided on: 29.02.2016**

Anoop Singh and others

....Petitioners

Versus

Bhuru Ram and others

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Vijay Singh Kajla, Advocate
for the petitioners.

REKHA MITTAL J. (Oral)

By invoking Article 227 of the Constitution of India, the present petition has been directed against order dated 28.01.2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Hisar, dismissing an application filed by the petitioners/plaintiffs for appointment of a building expert for ascertaining age of the building in question.

Counsel for the petitioners would contend that the petitioners have filed a suit for possession in respect of *gair mumkin* plot, detailed in the headnote of the plaint on the premise that Bhuru Ram-respondent No.1 has illegally took possession of the suit plot of the petitioners about 3 years ago and constructed his house thereon. The defendant/respondent No.1, in the written statement, has taken a plea that he is in possession of the plot in

question since 07.05.1959 and has raised construction of residential house over the plot. It is argued that the learned trial Court has committed a gross error by rejecting the application for appointment of a building expert to determine age of construction existing on the plot when otherwise a report to be submitted by a building expert would facilitate just decision of the case. It is further submitted that the order passed by the trial Court may be set-aside and the application may be allowed.

I have heard counsel for the petitioners, perused the records and find no merit in the petition.

The learned trial Court has held that appointment of a building expert as a local commissioner for ascertaining age of construction over the plot in question would amount to collecting evidence on behalf of the plaintiffs, not permissible in law. There cannot be any quarrel with the settled position in law that no party can be permitted to use process of Court for collecting evidence. If the petitioners wanted to examine any building expert, they could engage the so-called expert and then seek permission of the Court to allow him to inspect the suit property. The petitioners in place of seeking an appropriate relief has filed an application for appointment of an expert as a local commissioner that cannot be allowed in the existing scenario. Counsel for the petitioners is not in a position to convince as to how the present application falls

within the purview of Order 26 CPC, Rule 9 whereof empowers the Court to appoint a commission for local investigation for elucidating any matter in dispute, or of ascertaining market value of any property, or the amount of any mesne profits or damages or annual net profits. In this view of the matter, I do not find any error much less illegality in the impugned order as would call for intervention.

Dismissed.

(REKHA MITTAL)
JUDGE

29.02.2016
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