

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

CR No.4796 of 2016

Decided on: 28.07.2016

Rajinder Kumar and others

....Petitioners

Versus

Municipal Council, Faridkot and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. H.S. Bhullar, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition has been directed against the order dated 20.05.2016 (Annexure P-1) whereby application filed by the petitioners/plaintiffs for appointment of Local Commissioner who may practically drive the tractor-trolley and pass it into the main gate of the house of the plaintiffs/petitioners, has been dismissed.

Counsel for the petitioner has submitted that the petitioner has been suffering for the past 09 years due to erecting of a gate at points C and D reflected in the site plan (Annexure P-2). It is further submitted that the petitioners are running the business of sale of fodder and they are finding it difficult to pass their tractor-trolley through the gate erected by respondent No.3 with the permission of Municipal Council, Faridkot. It is further argued that as evidence of expert witness would be a clincher for deciding the controversy in question when otherwise no prejudice would be caused to the defendants/respondents in seeking report from an expert, the impugned order may be set-aside and the application filed by the petitioner for appointment of local commissioner may be allowed. In support of his contention, he has referred to judgment of this Court ***"Fateh Singh Saini vs State of***

Haryana and others”, 1987 PLJ 351.

I have heard counsel for the parties, perused the paperbook and find that the petition sans merit and deserves to be dismissed.

A Local Commissioner may be appointed by the Court to make local investigation by invoking Rule 9 of Order 26 of the Code of Civil Procedure. The said rule provides that 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 mesne 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.

As per the settled position in law, a Local Commissioner can neither be appointed for collecting evidence for a party nor can it be left to be decided by the Local Commissioner as to whether the factual controversy raised in the *lis* at the behest of either of the parties is correct or otherwise. That being so, I do not find any error much less illegality in the impugned order warranting intervention. In view of the above, the petitioners cannot derive any advantage to their contentions from the judgment in Fateh Singh Saini's case (*supra*).

For the foregoing reasons, the petition fails and is accordingly dismissed.

28.07.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No