

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

**CR No.5118 of 2016 (O&M)
Decided on: 07.09.2016**

Dara Singh and othersPetitioners
Versus
Darbara Singh and othersRespondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. G.S. Nagra, Advocate for the petitioners.

REKHA MITTAL, J.

CM No.17900-CII of 2016

Allowed as prayed for.

Documents Annexure P-5 and P-6 are taken on record.

CR No.5118 of 2016

The present petition has been directed against order dated 12.05.2016 (Annexure P-4) passed by Civil Judge (Sr. Division), SAS Nagar, whereby application filed by the petitioner/defendant for appointment of local commissioner has been dismissed.

Counsel for the petitioners has submitted that respondents/plaintiffs have filed a suit for possession of 06 marlas of land comprising *Khasra* No.139(2-1) detailed in headnote of the plaint with consequential relief of injunction restraining the petitioners/defendants from alienating and raising construction over the suit property. The suit filed by the respondents/plaintiffs is based upon the decree dated 06.08.2013 whereby suit for permanent injunction filed by the respondents/plaintiffs was partly decreed and was dismissed with regard to that part of *Khasra* No.139(2-1) which is under the road and the other part which as per report of the local commissioner is in possession of defendants namely Dara Singh and

others. The instant application was filed by the petitioners on the premise that there is a two *Gatha* wide passage towards the Eastern side of *bara* No.139 which is running at the spot. In case the Northern and Southern boundaries of *bara* No.139 are measured from the said passage in the East, area of *Khasra* No.139 would be found to be in occupation of the plaintiff except some part which falls under road. It has further been averred that the plaintiff in his cross-examination dated 21.09.2015 has admitted that he has got no objection in case some Advocate is appointed as a local commissioner to measure his *bara* from road to passage on the back side and to submit a report in respect of area in his possession. It is further submitted that the learned trial Court committed a serious error rather illegality in dismissing application for appointment of local commissioner.

I have heard counsel for the petitioners, perused the paperbook particularly the application (Annexure P-3), copy of the plaint (Annexure P-5), written statement (Annexure P-6), copy of the judgment and decree passed in the earlier suit and the impugned order.

It is an undisputed position of the case that on an earlier occasion, the respondents/plaintiffs filed a suit for permanent injunction to restrain the petitioners/defendants from encroaching/constructing numbered *bara* in Khewat/Khatauni 203/219 *Khasra* No.139(2-1) marked as ABCD in the rough site plan. In the said case, the respondents/plaintiffs laid strong emphasis on a report of a local commissioner depicting encroachment of land of the respondents by the petitioners. It is also not disputed that Sh. Rajinder Oberoi, Tehsildar, Fatehgarh Sahib was appointed as a local commissioner to conduct

demarcation at the spot and he submitted his report in this regard that was accepted by the Court after appreciating the entire evidence adduced by the parties. There is nothing on record suggestive of the fact that the judgment passed by the trial Court in the injunction suit has been challenged by the petitioners or the petitioners ever filed any objections in writing against report of the local commissioner.

The present application was filed by the petitioners for appointment of an Advocate as a commissioner to measure *bara* no.139 from passage in the East measuring two *Gatha* wide. A perusal of the written statement filed by the petitioners/defendants does not indicate that any such plea was raised that there is a two *Gatha* wide passage towards Eastern side of *bara* No.139. When counsel for the petitioners was confronted with this situation, he had tried to explain that in the written statement, there is reference to the road and the said road has been referred to as a passage in the application for appointment of local commissioner. The explanation submitted by counsel becomes seriously doubtful rather gets falsified and belied because the said road is stated to be on the Northern side of *bara* No.139. It has been averred in the concluding lines of para 3 of the written statement that a small part of *khassra* number falls on the road only and rest of the area of *Khasra* No.139 is in possession of the plaintiffs i.e. East: Street 08 *Gatha*, West: road, North 47 *Gatha*, South: 45 *Gatha*. Only some triangular part towards North falls in road about which no objection was ever raised. Keeping in view the facts narrated in the written statement, it is difficult to accept the explanation that the road referred to in the written statement has been described as a passage 02 *Gatha* wide in the

application for appointment of local commissioner. The learned trial Court did not advert to this important aspect of the matter while declining application filed by the petitioners. However, in view of stand of the petitioners/defendants in the written statement, no such plea of the petitioners can otherwise be accepted that a local commissioner is required to be appointed for measuring Northern and Southern boundaries of *bara* No.139 from 02 *Gatha* wide passage towards Eastern side of *bara* No.139. It further appears to the Court that by filing the present application, the petitioners intended to introduce some new facts that are not a part of pleadings. This apart, once there is a serious dispute between the parties with regard to encroachment purported to be made by the petitioners upon *Khasra* No.139, indisputably, owned by the respondents/plaintiffs, no useful purpose would be served by appointment of an Advocate to conduct measurement at the spot as an Advocate can never be well equipped to demarcate/measure any property. Analyzed from any angle, I do not find any merit in contentions of the petitioners that application for appointment of local commissioner is liable to be accepted.

For the foregoing reasons, the petition fails and is dismissed *in limine*.

07.09.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No