IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 5508 of 2015
Date of Decision : 29.03.2016

Swaran Singh ...Petitioner

Versus

Jagir Singh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1) *Whether Reporters of the 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?*

Present: Mr. Amit Dhawan, Advocate for the petitioner.

Mr. Liaqat Ali, Advocate for the respondents.

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Rekha Mittal, J. (Oral)

The present petition lays challenge to order dated 17.07.2015 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Nakodar, whereby application filed by the petitioner/defendants under Order XXVI Rule 9 of the Code of Civil Procedure (hereinafter to be referred as 'CPC') read with Section 151 CPC for appointment of Local Commission for verification and report with regard to actual and physical position of the property in dispute, has been dismissed.

Counsel for the petitioner would contend that Jagir

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Singh and others-respondents have filed a suit for separate possession by way of partition of the property measuring 9 kanal 7 marlas as per jamabandi for the year 2004-05, fully detailed in the headnote of the plaint (Annexure P-1). In the written statement preferred by defendants No. 2 and 4 to 6 including the present petitioner, it has been averred that the suit property already stands partitioned by way of a family settlement and the parties are in possession of their respective shares fell in the family partition and they have also raised construction of their residential houses. It is further argued that appointment of Local Commission to report about the existing possession at the spot would facilitate fair and just decision of the case when otherwise, no prejudice would be caused to the respondents/plaintiffs, if prayer made by the petitioner is allowed. It is further submitted that the order passed by the trial Court may be set-aside, the application may be allowed and a Local Commission may be appointed for verification of the spot and report about actual and physical position of the property.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that application filed by the petitioner does not fall within the purview and ambit of Rule 9 of Order XXVI, therefore, the learned trial Court has rightly rejected prayer of the petitioner

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for appointment of Local Commission as no one can be allowed to use process of law for collecting evidence as has been held by the learned trial Court.

I have heard counsel for the parties and perused the records, particularly the impugned order but find no merit in the petition.

As the defendants including the present petitioner have raised a categoric plea that the suit land already stands partitioned by way of family settlement and the co-owners are in possession of their respective shares, it is incumbent upon the defendants to substantiate their plea by leading evidence in order to counter plea of the respondents/plaintiffs that they are entitled to seek partition of the property in question, by alleging the same to be joint. No Local Commission is to be appointed by the Court for the purpose of collecting evidence for either of the parties. The parties have already adduced their evidence and the present application was filed when the case was fixed for evidence in rebuttal as well as arguments. It appears that the present application has been filed by the defendants with an intent to delay the proceeding and to fill up the lacunae in their case. Counsel for the petitioner is not in a position to convince the court that the application filed by the petitioner falls within the ambit and purview of Rule 9 Order XXVI CPC, which provides for appointment of a Local

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Commission for the purpose of elucidating the matter in dispute or ascertaining the market value of any property or the amount of any mesne profit or damages and annual profits.

In view of the above, I do not find any error much less illegality in the impugned order warranting intervention in exercise of supervisory jurisdiction under article 227 of the Constitution of India.

For the foregoing reasons, finding no merit, the petition is dismissed. No order as to costs.

March 29, 2016. **(REKHA MITTAL)**
kanchan **JUDGE**

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