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

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Date of Decision: 09.02.2016

Harjit Singh

... Petitioner(s)

Versus

Pargat Singh

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 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. Vipin Mahajan, Advocate,
for the petitioner.

Ms. Ravinder Kaur, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 18.02.2013 (Annexure P-5) passed by learned Additional Civil Judge (Sr. Divn.), Gurdaspur whereby application moved by the petitioner under Order 26 Rule 9 CPC for appointment of local commission has been dismissed.

Brief facts necessary for disposal of this revision petition are to the effect that the petitioner-plaintiff filed suit for possession after removal of malba of land measuring 4 marlas i.e. 3 marlas min lehnda

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out of 5 kanals comprised in rect. no.33 killa no.19 and 1 marla min lehnda out of 18 malras comprised in rect. No.33 killa No.22/1 khewat No.639/1 and 640, khatauni No.980/1, 981 as per jamabandi for the year 2006-07, denoted with letters ABCD and shown with yellow colour in the site plan attached with the plaint. It is pleaded in the plaint that the plaintiff got the suit land demarcated by submitting application to Tehsildar, Gurdaspur who deputed Sh. Sukhwinder Singh Kanungo Halqa to make demarcation at the spot. On 04.11.2009, said Kanungo with Patwari visited the spot and made demarcation according to law in presence of both the parties and defendant was found to be in illegal possession of the suit land as shown in the site plan Naksha Tafawat. Since there was an ambiguity and the respondent has alleged that the said report cannot be accepted as he was not associated while demarcation was carried out and any demarcation at the back of a party cannot be used against him, therefore, the petitioner moved application for appointment of local commissioner which has been dismissed vide impugned order dated 18.02.2013 (Annexure P-5). Hence, this revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that the impugned order has been passed by the trial Court in a mechanical manner and without due appreciation of facts of the case. He further contended that the local commissioner can be appointed, at

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any stage, to identify the property and encroachment etc. In support of his contentions, he relied upon *Haryana Waqf Board vs. Shanti Sarup and others* (2008) 8 Supreme Court Cases 671 and *Akal Education Society vs. Madan Lal* 2012 (1) Law Herald 923.

Per contra, learned counsel for the respondent has vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order. She contended that revision against the order refusing to appoint a local commissioner is not maintainable. In support of her contentions, she relied upon *Harvinder Kaur and another vs. Godha Ram and another* 1979 PLJ 562, *Bant Singh alias Balwant Singh and another vs. Raghubir Singh and others* 2008(4) RCR (Civil) 260, *Ganpat vs. Satbir and others* 2013 (1) Law Herald 521, *Jagmohan vs. Ramesh Kumar @ Ramesh Chander and another* 2014 (1) PLR 472 and *Mohanjit Singh vs. Gagandeep Singh Grewal and others* 2015 (4) R.C.R. (Cvil) 617.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, demarcation was carried out, although may be at the back of the defendant, but the fact remains that civil suit has been filed seeking possession. In *Shanti Sarup's case (supra)*, the Hon'ble Supreme Court has held that local commissioner can be appointed after the evidence led by the parties. In this case also, evidence has been led by the parties and the respondent claims that there was an ambiguity in

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the demarcation report and he has raised objection with regard to the demarcation report on the ground that the same was carried out at his back, therefore, in order to do complete justice with the parties and to clarify the existing position at the spot, it is necessary to appoint local commissioner for demarcation and this Court is fully competent to pass order for appointing local commissioner, at this stage. It is not the case of collecting evidence through local commissioner in favour of a particular party, but is only to find out the truth at the spot whether there is encroachment or not. In this regard, reliance can be placed upon *Shanti Sarup's case* and *Akal Education Society's case (supra)*.

As a result of above discussion, the impugned order dated 18.02.2013 (Annexure P-5) is perverse, illegal and suffers from jurisdictional error because the trial Court refused to exercise jurisdiction which vested in it to appoint local commissioner. As such, the instant revision is allowed and the impugned order dated 18.02.2013 (Annexure P-5) is set aside and trial Court is directed to appoint a local commission not below the rank of Naib Tehsildar for demarcating the disputed land. The trial Court will assess the fee of local commissioner. The local commissioner shall visit the spot after giving prior notice to both the parties. The trial Court shall afford opportunity to the parties for raising objections, if any to the report of the local commissioner. Since the petitioner has approached this Court at a belated stage, he is burdened with costs of ₹10,000/-. The costs shall be deposited with the

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trial Court out of which some amount shall be paid to the local commissioner and remaining amount shall be deposited with the District Legal Services Authority, Gurdaspur.

09.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge