

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 04, 2016

1. Civil Revision No.6032 of 2015

Mahender Singh & another

...Petitioners

Versus

Gram Panchayat Village Mubarikpur, District Gurgaon & others

...Respondents

2. Civil Revision No.6103 of 2015

Mahender Singh & another

...Petitioners

Versus

Balbir Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of 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.Sanjay Verma, Advocate,
for the petitioners in both the cases.
Mr.Neeraj Gupta, Advocate,
for respondent No.1 in CR No.6032 of 2015.
None for the respondents in CR No.6103 of 2015

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Civil Revision
Petitions No.6032 and 6103 of 2015 as the common questions of law and
fact involved in both the petitions are the same. The facts are being taken
from Civil Revision No.6032 of 2015.

The petitioner-plaintiffs are aggrieved of the order dated

29.4.2015 (Annexure P-4), whereby the application seeking appointment of the revenue official for demarcation of the land encroached during the pendency of the suit, has been declined.

Mr.Sanjay Verma, learned counsel appearing on behalf of the petitioner-plaintiffs submits that since the respondents, during the pendency of the suit, encroached upon part of Killa No.16/2 including part of their own khasra No.16/3, therefore, appointment of the Local Commissioner has been sought to demarcate the suit land, particularly the alleged encroachment, but the same has been declined on the ground that the Local Commissioner cannot be appointed to collect the evidence. In support of his contention, relied upon the decision dated 26.11.2015 rendered by this Court in **Civil Revision No.6026 of 2015 (Nirmal Kumar Versus Smt.Arwinder Kaur and others)**, while relying upon the judgment rendered by the Hon'ble Supreme Court in **Shreepat Versus Rajendra Prasad and others, 2000 (3) ICC 728.**

Mr.Neeraj Gupta, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the impugned order and, therefore, has rightly been passed. The application is not maintainable as it is for the plaintiffs to stand on their own legs by proving the same. He further submits that the revision is not maintainable in view of the judgment rendered with regard to the provisions of Section 115 CPC, whereas the scope of interference under Article 227 of the Constitution is not wide as this Court is superintending powers upon the subordinate courts.

I have heard the learned counsel for the parties and appraised the paper book.

In view of the subsequent event, which has taken place, there is no other remedy for the petitioners to prove the alleged encroachment but through the assistance of the Local Commissioner. I am supported by the ratio decidendi culled out by this Court in **Nirmal Kumar's case (supra)**, and particularly the judgment of the Hon'ble Supreme Court in **Shreepat's case (supra)**, wherein it has been held that the revenue official is essential and necessary to be appointed as a Local Commissioner for ascertaining the alleged encroachment.

Accordingly, the impugned order is set-aside. The application seeking appointment of the Local Commissioner is allowed.

Revision petition stands allowed.

February 4, 2016
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(AMIT RAWAL)
JUDGE