

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

**CR No.6039 of 2015
Decided on: 27.02.2016**

Shamsher Singh

....Petitioner

Versus

Aman Aneja and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Pankaj Bhardwaj, Advocate
for the respondents.

REKHA MITTAL J. (Oral)

The present petition lays challenge to order dated 02.07.2015 passed by the Civil Judge (Junior Division), Amritsar, dismissing application of the petitioner for appointment of a local commissioner.

The petitioner has filed a suit for permanent injunction restraining the defendants/respondents from raising construction from point A to B in the property bearing Khasra No.165. An application was made for appointment of a Revenue Officer as local commissioner to demarcate the property so as to ascertain that the same falls in Khasra No.165.

The learned trial Court, on due consideration of merits

of the application, on the basis of rival submissions made by counsel for the parties rejected prayer by holding that the plaintiff cannot seek assistance of the Court to create evidence in his favour. The plaintiff has to clearly identify the property and has to prove his right in the suit property by leading cogent and convincing evidence.

Counsel for the petitioner has submitted that in case a Revenue Officer is appointed as local commissioner to conduct demarcation of the site, the ends of justice would be better served.

Counsel for the respondents, on the contrary has supported the impugned order with the submissions that application filed by the petitioner, by no means, falls within the purview of Order 26 Rule 9 CPC, thus, has been rightly dismissed by the learned trial Court.

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

The petitioner has filed a suit for permanent injunction restraining the defendants from putting any hindrance, obstruction, etc. by raising wall from point A to B depicted in Red in the site plan attached over the property bearing Khasra No.165 with boundaries detailed in the headnote of the plaint. The learned trial Court has rightly held that a litigant cannot be allowed to use process of the Court for collecting evidence and it is for the

plaintiff to establish identity of the suit property and his claim for grant of permanent injunction as prayed for. Counsel for the petitioner is not in a position to satisfy the Court that the present application falls within the purview of Rule 9 of Order 26 CPC that provides for appointment of a local commission 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. That being so, I do not find any error much less illegality in the impugned order.

Dismissed. No order as to costs.

(REKHA MITTAL)
JUDGE

27.02.2016

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