

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

CR No.6546 of 2016(O&M)

Date of decision:29.9.2016

Satish and others

....Petitioners

VERSUS

Sant Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Sangwan, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 23.08.2016 (Annexure P-3) passed by the Civil Judge (Junior Division), Charkhi Dadri whereby an application filed by the petitioners for appointment of local commissioner to inspect the land in dispute to find out the factual position has been dismissed.

Counsel for the petitioners has submitted that no prejudice shall be caused to the respondents/defendants if a local commissioner is appointed to visit the spot and report about the factual position. On the contrary, the report of the local commissioner may help the trial Court in arriving at a proper decision in regard to the allegations and counter-allegations raised by the parties.

I have heard counsel for the petitioners perused the paper-book particularly the order impugned but find no reason to intervene.

The learned trial Court, after hearing counsel for the parties at length in the light of their respective pleadings in the application and reply has made the following observations:-

“.....Further the applicant has alleged that one water supply tank, old aged Aashram and chaupal have been constructed over the land in dispute but the same have been admitted by the respondents/defendants. It clearly shows that the substantial contention as to construction of water tank, old aged Aashram and Chaupal have been already admitted by the either party. Now dispute remained about the remaining part of the land in dispute as the applicant says that it has been used by the plaintiff but respondent asserts it in their possession. Meaning thereby the present application has been moved to ascertain the physical possession of the suit property as to create the evidence in favour of the plaintiff through Court but that is now allowed. It is the plaintiff who has to prove by leading some clear and cogent evidence that they are in the possession of the suit land because the revenue records such as jamabandis and khasra girdawari speaks as to the possession of the respondents/defendants and not that of the plaintiff....”

A plain and careful reading of the aforesaid extract makes it evident that the trial Court has not committed any error much less illegality in negating plea of the petitioners/plaintiffs for appointment of the local commissioner and there is no justification to interfere in the discretion exercised by the Court. However, any observations made by the trial Court qua possession of the land in question would not cause prejudice to the petitioners at the time of final disposal of the suit.

In view of what has been discussed hereinabove, the petition stands disposed of. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

SEPTEMBER 29, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no