

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6870 of 2015

Date of Decision: 26.04.2016

Ravinder Singh and Another

... Petitioner(s)

Versus

Majhail Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Gulzar Mohd., Advocate
for the petitioner(s).

Mr. Sandeep K. Sharma, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 6.8.2015, passed by learned Civil Judge (Junior Division), Khanna, whereby direction was issued to the petitioner to allow draftsman to prepare the site plan of the suit property and to get the measurement thereof done.

Learned counsel for the petitioner submitted that plaintiff filed a suit for possession of property and petitioner being defendant contested the suit. In order to create the evidence, plaintiff had moved

applications twice for appointment of Local Commissioner and the Court below vide order dated 16.7.2013 appointed the Local Commissioner with the direction to visit the spot on 23.7.2013 at 12.00 noon after due notice and in compliance of the said order, Local Commissioner actually visited the spot and submitted his report and thereafter on 16.8.2013, revenue official was appointed as Local Commissioner again with the direction to visit the spot and measure the property and prepare the site plan of the property which is in the possession of the petitioner. Even the second Local Commissioner submitted his report dated 13.9.2013.

Subsequently, another application was filed for directing the petitioner to get the site plan prepared from the draftsman and for that purpose, Mahesh Kumar, Draftsman be allowed to get the measurement of the suit land, whereas there is no justification for appointment of Local Commissioner again and again so as to create evidence in favour of the parties and the Court below completely ignored these facts while passing the order under challenge and the said order be set aside.

Learned counsel for the respondent submitted that vide impugned order, draftsman is to visit the spot to prepare the site plan and to get the measurement of the suit property and the Court below allowed the application and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that the trial Court has adopted strange procedure by allowing application for appointment of Local

Commissioner one after the another. Certainly, it was well within the jurisdiction and discretion of the trial Court to appoint the Local Commissioner with the direction to visit the spot and submit report about the factual position of the spot, if the Court considers that appointment of Local Commissioner shall help the Court to arrive at the factual position and to appreciate the evidence in proper manner. But in this case, trial Court had appointed the Local Commissioner twice and there was absolutely no justification for passing of order dated 6.8.2015 thereby directing the petitioner to allow the draftsman to prepare the site plan of the suit property. That certainly amounts to interference into the rights of privacy of the petitioner, who is in occupation of the suit property. The impugned order also amounts to creating evidence in favour of the party, which is not permissible as per law.

In view of above observations, present petition is hereby accepted and impugned order dated 6.8.2015, being against the settled proposition of law, is hereby set aside.

(Shekher Dhawan)
Judge

April 26, 2016

"DK"