

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

CR No. 7051 of 2014 (O&M)

Date of decision: January 8, 2016

Balkar Singh

...Petitioner

Versus

Gian Singh and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE K. KANNAN**

- 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. Vikas Gupta, Advocate,  
for the petitioner.

Mr. HS Batth, Advocate,  
for the respondents.

**K. KANNAN, J. (Oral)**

1. The revision is against the order dismissing an application for appointment of a Local Commissioner. The commission was sought to be issued to assess the existence of a wall and its physical features on an apprehension that the defendants are going to demolish the same. It appears that the defendants had independently filed a suit in respect of the same subject matter and obtained a decree ex-parte. An application to set aside the ex-parte decree is reported to be pending. The objection was that since the decree has already been passed in favour of the defendants, the present suit itself is barred and an application for appointment of Commission is equally barred being brought in an incompetent suit. I reject this argument and hold that identification of a physical feature in a suit where there is a

justifiable apprehension expressed that wall is likely to be demolished and that physical features require to be gathered, specially when the decree the defendants claimed to have obtained against the plaintiff has not become final and there is an application for setting aside the same.

2. The learned counsel for the respondents supports the order by contending that the principle of resjudicata would apply since the matter has already been decreed in favour of the defendants. The plea of resjudicata by the respondents is meaningless when the earlier suit is not at final and the proceedings for setting aside ex-parte decree are still pending. The doctrine applies only to finality of judgment of an earlier suit between the same parties and in respect of the same subject matter and not in respect of the matter where the issues are still at large awaiting further adjudication.

3. In such a situation, the court should have allowed the commission to be issued so as to assist the court in addressing the controversies. No prejudice could be caused to the respondents, but on the other hand, it will go a long way to assist the court to address the controversy between the parties.

4. The order already passed is set aside and the petition for appointment of commission is allowed. The trial court will appoint a suitable person on such remuneration as it may determine to carry out such direction, as the trial court might issue.

5. The revision is allowed on the above terms.

**January 8, 2016**  
prem

**(K. KANNAN)**  
**JUDGE**

