

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

**CR No.769 of 2016 (O&M)
Decided on: 29.02.2016**

Sukhwant Kaur

....Petitioner

Versus

Rajinder Singh and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. S.S. Rangi, Advocate
for the petitioner.

REKHA MITTAL J. (Oral)

By invoking Article 227 of the Constitution of India, the present petition has been directed against the order dated 24.11.2015 (Annexure P-3) passed by the Civil Judge (Junior Division), Samrala, dismissing an application filed by the petitioner/plaintiff for appointment of a local commissioner.

Counsel for the petitioner would contend that the petitioner has filed a suit for possession by way of partition of the house, detailed in the headnote of the plaint on the premise that he is a co-sharer in the house. It is submitted that appointment of a local commissioner is necessary for ascertaining boundaries of the house in dispute as the house falls within the *abadi deh* and its identity cannot be established by way of Khasra number. It is argued that the learned trial Court has dismissed the application

primarily on the ground that allowing the application will tantamount to collecting evidence on behalf of the petitioner, not permissible in law. It is further submitted that the order passed by the trial Court may be set-aside and the application may be allowed.

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

The learned trial Court has held that appointment of a local commissioner for ascertaining boundaries of the house in dispute would amount to collecting evidence on behalf of the petitioner/plaintiff, not permissible in law. There cannot be any quarrel with the settled position in law that no party can be permitted to use process of Court for collecting evidence. If the petitioner wanted to get prepare a site plan, she can move an appropriate application to allow inspection of the building by a draftsman engaged by her.

Counsel for the petitioner is not in a position to convince as to how the present application falls within the purview of Order 26 CPC as Rule 9 thereof empowers the Court to appoint a commission for local investigation for 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. In this view of the matter, I do not find any error much less illegality

in the impugned order as would call for intervention.

Dismissed.

(REKHA MITTAL)
JUDGE

29.02.2016

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