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

CR-8818-2015

Date of Decision : May 25th, 2016

Krishan Lal

.... Petitioner

Versus

Avinash Chand @ Avinash Kumar and another Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Rajesh Arora, Advocate,
for the petitioner.

Mr. Parminder Singh, Advocate,
for respondents No.1 and 2.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 09.07.2015 [Annexure P/7], whereby application filed by the plaintiff for appointment of Local Commissioner has been dismissed.

2. Learned counsel for the petitioner submitted that the Court below has completely ignored the fact that the real dispute is regarding demarcation of the property which can certainly be resolved by appointment of a Local Commissioner with a direction to visit the spot in the presence of both the parties and after giving notice to them, but the Court below declined the said prayer and the present petition be accepted and the impugned order be set-aside. On this point reliance has been placed on the

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judgment of Hon`ble Supreme Court in **Haryana Wakf Board and Shanti Sarup & Ors. 2008(8) SCC 671;** and decisions of this Court in **Banarsi Das Vs. Sardha Ram and others, 2015(9) RCR [Civil] 590,** and **Akal Educational Society Vs. Madan Lal, 2012(1) Law Herald 923.**

3. While arguing on this point, learned Counsel for the respondents submitted that the Court below has already decided the application for appointment of Local Commissioner and it is not the job of the Court to create evidence for the parties. More so, against order of appointment of Local Commissioner, revision petition is not maintainable. On this point, reliance has been placed on the judgments from Co-ordinate Benches of this Court in **Syed Iftisar Ahmed Sajjadanashin and Khaliffa Vs. Syed Mohd Yahiya and Anr., 1991(2) PLR 409** and **Vinod Kumar Vs. Gram Panchayat of Village Kheri Naru and others, 2008(1) RCR [Civil] 697.**

4. Having considered the submissions made by learned counsel for the parties, the matter in controversy and the authorities cited, this Court is of the considered view that undisputedly, the parties have raised a dispute regarding demarcation of the property on the basis of partition. The case is at initial stage. Allowing of the application for appointment of Local Commissioner with the direction to visit the spot and demarcate the suit property does not mean that the Court is creating evidence for the parties. Rather, the same shall help the Court to arrive at factual position and to appreciate the evidence led by the parties in the main suit in correct perspective. Such a view was taken by Hon`ble Supreme Court in **Haryana Wakf Board's case [supra]** and by the Co-ordinate Benches of

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this Court in **Banarsi Das 's and Madan Lal's cases [supra]**.

5. As regards view taken by this Court in **Syed Iftisar Ahmed Sajjadanashin's case [supra]**, it is settled proposition of law that the Court is to decide the controversy on the basis of facts of each case independently and in the present case, there was no reason for the Court below to decline such a prayer and that being the position, this Court has certainly got the jurisdiction to direct the parties to get appointment of Local Commissioner. Needless to mention that report of Local Commissioner shall be before the Court and either of the party shall have a right to challenge the same by way of filing Objection Petition or even by calling the Local Commissioner in the Court as a witness for the purpose of cross-examination.

6. In **Vinod Kumar's case [supra]**, the matter was regarding the dispute with regard to possession over the property and not demarcation of the property and as such, the same is again distinguishable on facts.

7. In view of the above, order dated 9.7.2015 [Annexure P/7] passed by Civil Judge [Junior Division], Karnal is hereby set-aside and the Court below is directed to appoint a Local Commissioner with a direction to visit and demarcate the suit property in the presence of both the parties and any other direction to be issued by the Court below regarding appointment of Local Commissioner. The present petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

May 25th, 2016
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