

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

CR No.1741 of 2017.

Date of Decision: 15.03.2017.

Jagan Nath and others

....Petitioners.

VERSUS

Kulwant Rai alias Kulwant Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.K. Singla, Advocate for the petitioners.

SNEH PRASHAR, J.

Aggrieved of the order dated 27.02.2017 vide which learned Additional Civil Judge (Junior Division), Phul dismissed the application of the petitioner for appointment of Local Commission, the instant revision petition under Article 227 of the Constitution of India has been filed.

The submissions made Mr. J.K. Singla, learned counsel representing the petitioners have been heard.

Learned counsel for the petitioners submits that appointment of Local Commission had been sought by the petitioners in order to find out the factual and existing position of the buildings/shops at the spot as well as the passage left by respondent-defendant No.1 out of the land of his share as respondents-defendants No.1 and 2 had denied that they had sold any land by making plots or by constructing buildings/shopping complex and had not left any passage. In the transfer deed executed by respondent-defendant

No.1 in favour of respondents-defendants No.2 and 3 wrong khasra numbers and wrong sides had been mentioned. Submitting that the appointment of Local Commission is necessary for proper and complete adjudication of the case, learned counsel contends that the order of learned trial Court dismissing the application is illegal. To support his argument, learned counsel relies upon **Ran Singh and another vs. Jagir Singh etc., 2014(79) R.C.R. (Civil) 151; Kishan Dass @ Krishan Dass & anr. vs. Bhikham Singh, 2016(3) R.C.R. (Civil) 651; and Gurpartap Singh @ Gurpavitar Singh vs. Jagmeet Singh, 2015(1) P.L.J. 691.**

It is not the contention of learned counsel for the petitioners that there is any dispute between the parties regarding boundaries of the suit property. It is also not a case where demarcation of the suit property is required for resolving the dispute of encroachment etc. The reasons for dismissal of the application assigned by learned trial Court are as under:-

*“After hearing learned counsel for the parties and after perusing the record carefully, I find no merits in the application because no purpose has been mentioned in the application, which would be served by appointment of local commissioner. Present suit is for declaration and the plaintiffs have only sought declaration about their share. The construction or non construction of the property in dispute is not a subject matter of the present suit. Moreover, the duty of the party in a suit cannot be delegated on the local commissioner, which is a well settled law. None of the parties to the suit can be permitted to create evidence under the garb of appointment of local commissioner. The law relied upon by the learned counsel for the plaintiffs reported in **Ran Singh and another Vs. Jagir Singh etc. 2015(2) PLR 42** is not applicable to the facts and circumstances of the case in hand. In the suit for declaration, appointment of local commissioner*

is not warranted and uncalled for. The evidence of both the parties has already been concluded and as such the present application at the behest of the plaintiffs, at the fag and is not maintainable. As such, without prejudiced to the merit of the case, the application under consideration is, hereby, dismissed.”

When the suit of the petitioners-plaintiffs is for declaration of their ownership rights/share in the suit property as shown in the site plan filed by them with the plaint, there appears no ground for appointment of Local Commission to investigate the factual and existing position at the spot. The Court cannot delegate its essential functions to determine the question of ownership or possession, which is to be proved by the parties by leading independent evidence. Local Commission can also not be appointed to collect evidence on behalf of one party. It was mentioned in the impugned order by learned trial Court that both the parties had already concluded their evidence when the application for appointment of Local Commission was filed by the petitioner. Having already led required evidence to substantiate their claim and in the light of the facts, as observed above, learned trial Court rightly dismissed the application.

There being no illegality or perversity warranting interference in the order of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

15.03.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**