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

**Civil Revision No.2515 of 2017
Date of Decision: 24.07.2017**

ANIL KUMAR

.....Petitioner

Vs

DEEPAK BAJAJ

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. A.K. Jindal, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged order dated 20.03.2017 passed by Civil Judge (Jr. Divn.) Karnal, whereby second application filed for the appointment of Local Commissioner was accepted.

[2]. Brief facts are that in a suit for specific performance filed by the plaintiff/respondent, he filed an application under Order 26 Rule 9 read with Section 151 CPC for the appointment of Local Commissioner at the initial stage. The said application was rejected by the Civil Judge (Sr. Divn.) Karnala vide order dated 11.12.2013. Thereafter issues were framed. Issue No.1 was to the following effect:-

1. *Whether plaintiff is entitled to a decree for possession by way of specific performance of the agreement to sell dated 3.7.2012? OPP*

[3]. Plaintiff concluded his evidence and the defendant also concluded his evidence. At the stage of rebuttal, second application for the appointment of Local Commissioner was moved. Para No.4 and 6 of the said application are to the following effect:-

4. *That during the proceedings of the case on 01.02.2017 when defendant Anil Kumar was subjected to cross examination he was put specific photographs Mark F to Mark S of the suit property, but he has specifically stated that photographs Mark F to S are not of the property in dispute and also stated that he has got no right title or concern with property shown in the photographs and also present case is not with respect to the property which is shown in the said photographs.*
6. *That in order to decide the real controversy between the parties and to meet the ends of justice and fair play it is very much necessary to get report about the existing state of affairs over the suit property along with its photographs by a duly appointed Local Commissioner by this Hon'ble Court. In case Local commissioner is appointed for the above said purpose, the real controversy between the parties would come to an end and this Hon'ble Court will be able to pronounce judgment in more effective manner*

and also it would avoid multiplicity of litigation. The truth will come before this Hon'ble Court with regard to existing state of affairs over the suit property. Moreover, no prejudice is going to cause to the defendant who is claiming to run his business over the suit property. In case the local commissioner is not appointed the valuable rights of the plaintiff would be prejudice and it would further lead to multiplicity of litigation.

It is therefore prayed that a Local Commissioner may kindly be appointed to report about the existing state of affairs over the suit property along with its photographs, in the interest of justice.”

[4]. Learned counsel for the petitioner submitted that during the proceedings some photographs Mark F to S were shown to the defendant which were claimed to be that of suit property. The said photographs were denied by the defendant/petitioner and on that premise it was prayed by the plaintiff/respondent that a Local Commissioner be appointed in order to ascertain the identity of the property. Plaintiff/respondent was successful in getting the Local Commissioner appointed in his second attempt.

[5]. Learned counsel further submitted that the process of appointment of the Local Commissioner cannot be utilized to collect evidence by the party and the prayer was rightly rejected by the trial Court on 11.12.2013. The second application was not

maintainable as the same was the result of crude attempt made by the plaintiff/respondent by showing some alleged photographs of the suit property which were denied by the defendant/petitioner.

[6]. I have heard learned counsel for the parties.

[7]. From the record I find that the case was at rebuttal stage. Onus of issue No.1 was on the plaintiff himself. He did not lead any evidence in affirmative, nor reserved his right to lead evidence in rebuttal. Plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was upon plaintiff himself.

[8]. In view of aforesaid, I find that the impugned order passed by the trial Court is not legally sustainable. The appointment of Local Commissioner cannot be utilized to collect evidence for either of the party. The party is required to lead its substantive evidence to prove the identity of the property or nature of the possession over the suit land/property.

[9]. Consequently, the impugned order dated 20.03.2017 is set aside and the revision petition is allowed.

July 24, 2017

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No