

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

C.R. No.3231 of 2017

Date of Decision: 08.05.2017

Paramjit Singh (since deceased) through
LRs and others

....Petitioners

Versus

Harbans Lal Saini (since deceased) through
LRs and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ram Kumar Chauhan, Advocate
for the petitioners.

DAYA CHAUDHARY, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 11.04.2017 passed by Civil Judge (Junior Division), Hoshiarpur, whereby, the application moved by the petitioners under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner, has been dismissed.

Learned counsel for the petitioners submits that if the Local Commissioner is appointed, it would make the picture clear regarding possession and also as to whether there is any encroachment over the land, in dispute, or not. There is no necessity to continue with the suit, in case, Local Commissioner is appointed and no prejudice is going to be caused to the other side.

Heard arguments of learned counsel for the petitioners and have also perused the impugned order dated 11.04.2017 passed by Civil

Judge (Junior Division), Hoshiarpur.

The facts are not disputed. The application moved by the petitioners for appointment of Local Commissioner has been dismissed on the ground that it is a matter of evidence and evidence has not come on record so far. The purpose of appointment of Local Commissioner is not to create any evidence, keeping in view the nature of suit as the same is for permanent injunction. Written statement to the suit has been filed, whereas, the averments made in the suit have been denied. The plaintiff-petitioners have moved an application for appointment of Local Commissioner from the revenue side with a direction to get the demarcation done. The defendants are denying encroachment over the land and nowhere, it has been admitted that there is no encroachment on the land.

Keeping in view the nature of suit, whether any encroachment is there or not, can be decided by leading evidence and it is for the trial Court to see after having evidence from both sides as to whether the defendant can be restrained from encroaching upon the land or not. At this stage, nothing can be said as it is a matter of evidence. The purpose of appointment of Local Commissioner is not to collect evidence as the same has been mentioned in the impugned order also.

The parties are at liberty to lead evidence at an appropriate stage and as such, no interference is required in the impugned order.

The revision petition is accordingly dismissed.

(DAYA CHAUDHARY)
JUDGE

08.05.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes