

111            IN THE HIGH COURT OF PUNJAB AND HARYANA  
                 AT CHANDIGARH

CR No. 334 of 2017  
DECIDED ON: FEBRUARY 01, 2017

SHAMINDER KAUR

....PETITIONER

VERSUS

BALJIT KAUR & ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Amit Arora, Advocate  
             for the petitioner.

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JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated December 02, 2016 passed by learned Additional Civil Judge (Sr. Division), Khadur Sahib, District Tarn Taran whereby, an application filed by the petitioner/plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure (for short 'Code') for the appointment of local commissioner, has been dismissed.

Learned counsel for the petitioner has submitted that the learned trial Court while passing the impugned order has observed that there is no requirement of collecting any evidence by appointing Local Commissioner, which can otherwise be proved by plaintiff. In fact, the learned trial Court has failed to appreciate that the defendants/respondents while filing their written statement has categorically stated that no brick kiln is existing at the spot and

the land in dispute is cultivable. Otherwise also, the whole case of the petitioner is that the defendants are trying to demolish the structure of brick kiln, thus, the appointment of Local Commissioner is very much essential in the instant case to determine the actual and factual position. While concluding his arguments, it has further been submitted by learned counsel for the petitioner that since the impugned order is not sustainable in the eyes of law and as such it is liable to be set aside. Consequently, application under Order XXVI Rule 9 of the Code deserves to be accepted.

After bestowing due consideration as well as scrutinizing the relevant provisions under Order XXVI Rule 9 of the Code, this Court does not find any legal or factual weight in the instant petition.

No doubt, Rule 9 of Order XXVI of the Code empowers the court to issue make local investigation, which may be required for the purpose of elucidating any matter in dispute. Yet, the object of the local investigation is not to collect evidence, which can be taken in the Court. Similarly, no local commissioner can also be appointed for the purposes of obtaining any evidence to assist a particular party. In the case in hand, the main controversy is, with regard to the existence or non-existence of brick kiln in the disputed property, the determination of which, cannot be relegated or delegated to the local commissioner.

Thus, this Court does not find any illegality or impropriety in the impugned order. As such, it stands dismissed.

**FEBRUARY 01, 2017**  
**sham**

**(JASPAL SINGH)**  
**JUDGE**

*Whether speaking/reasoned*      *Yes/No*  
*Whether reportable*              *Yes/No*