

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

**CM-15569-CII-2017 in/and
CR-3845-2017
Date of decision: 08.08.2017**

Sanwat and others

...Petitioners

Versus

Phooli and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Tyagi, Advocate,
for applicant-petitioners.

Ritu Bahri, J.

CM-15569-CII-2017

Annexure P-4 is taken on record.

Misc. application stands allowed accordingly.

On an the request made by learned counsel for the petitioners, the main petition i.e. CR-3845-2017 is taken up today itself for disposal.

CR-3845-2017

Challenge in this petition is to the order dated 25.04.2017 (Annexure P-2) passed by the Civil Judge (Junior Division), Gurugram, whereby application filed by defendant No.4-Rajinder Singh (petitioner No.10 herein) under order 26 Rule 9 CPC for appointment of Local Commissioner during the pendency of execution petition, has been dismissed.

After hearing learned counsel for the petitioners and going

through the impugned order dated 25.04.2017 (Annexure P-2), it transpires that Civil Suit No.9 of 2012 filed by plaintiff-decree holders (Smt. Phooli etc.) decreed on 05.02.2015 by the Court of Civil Judge (Junior Division), Gurugram. The said suit was decreed as the defendants had admitted the ownership and possession of the plaintiffs over the portion as shown in red colour in the site plan Ex.P3 marked by letters 'CDEF'. In view of the said fact, the defendants (petitioners herein) were restrained from encroaching upon the portion of the plaintiffs marked as 'CDEF' as shown in the site plan by raising any wall over the portion 'EF'. The defendants had admitted that they had raised construction of boundary wall at point 'C' and 'F'. While decreeing the suit, a direction was also given to the defendants to remove the said wall as the plaintiffs were owners in possession of this portion as admitted by Rajender-defendant No.4. Once, the suit had been decreed on account of admissions made by the defendants, there was no occasion to appoint a Local Commissioner as the portion marked by letters 'CDEF' in the site plan, Ex.P3, was given to the plaintiffs after removing the encroachment of defendants.

Learned counsel for the petitioners states that even as per *Aks Shajra* (Annexure P4), the Local Commissioner was required to measure the land, possession of which has to be given to the plaintiffs (decree holders).

This argument of learned counsel for the petitioners is liable to be rejected because as per site plan, Ex.P3, the defendants have admitted that plaintiffs are owners of portion marked as 'CDEF' and hence, any boundary wall constructed at point 'E' and 'F' was to be removed by them. There was no need for appointment of any Local Commissioner for removal of the said wall from point 'E' and 'F'.

Resultantly, no ground is made out to interfere in the impugned order.

Dismissed.

08.08.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No