

CR No. 4827 of 2015 (O&M)

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

**CR No. 4827 of 2015 (O&M)
Date of Decision: 30.8.2017**

Amrik Singh

.....Petitioner

Vs.

Bant Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Saurabh Kaushik, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff has filed present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order dated 28.4.2015 (Annexure P-2) passed by the learned trial court, whereby his application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure ('CPC' for short), for appointment of Local Commissioner was dismissed.

Notice of motion was issued. However, nobody has come present on behalf of the respondent.

Heard learned counsel for the petitioner.

Plaintiff-petitioner has filed suit for mandatory injunction, directing the defendants to restore 3 karams wide passage, which was existing between khasra No. 580/1 and 580/2, starting from phirni of the village and leading towards the land of the parties. He also sought a decree

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of permanent injunction, restraining the defendants from causing any obstruction in the passage. It was during the pendency of this suit that plaintiff filed the application under Order XXVI Rule 9 read with Section 151 CPC, for appointment of Local Commissioner for the purpose of demarcation of the site and submitting his report, as to whether 3 karams wide passage exists at the site or not. It was this application which was rightly dismissed by the learned trial court, while passing the impugned order. It is so said, because plaintiff-petitioner was having ample evidence at his disposal, so as to prove his case. Having said that, this Court feels no hesitation to conclude that the learned court below was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

When confronted with the abovesaid fact situation as to why the plaintiff could not summon the relevant revenue record and also concerned revenue official, so as to prove his pleaded case, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Petitioner could not have been permitted to seek assistance of the court, so as to prove his case. It is for the plaintiff to prove his pleaded case by leading cogent and convincing evidence. Plaintiff cannot seek assistance of the court for collecting evidence. That is what has been held by the learned court below by passing the impugned order. Under these circumstances of the case, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising

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its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

30.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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