

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

CR No.4450 of 2017
Date of decision : 18.07.2017

Surinder Singh

...Petitioner

Versus

Bimal Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. A.S. Ahluwalia, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The plaintiff has filed this revision petition under Article 227 of the Constitution of India impugning the order passed by Civil Judge (Junior Division), Bathinda dated 05.05.2017 dismissing the application filed by the plaintiff for appointment of the Local Commissioner.

The plaintiff had filed a suit for permanent injunction seeking restraint order against the defendant No.1 from interfering into peaceful possession of the plaintiff. During the pendency of the suit as noticed above, the plaintiff filed an application for appointment of the Local Commissioner. The plaintiff had prayed for appointment of the Local Commissioner to ascertain the actual possession of the plaintiff over the house in question. It was prayed that the Local Commissioner may be appointed with a direction to visit the spot and report regarding the physical possession of the plaintiff over the house in question.

Learned Civil Judge (Junior Division), Bathinda after considering all the aspects of the matter found that the application is without merit and hence dismissed the same. The learned Civil Judge found that it is for the plaintiff to prove his case and Local Commissioner cannot be appointed to determine the possession of any of the party over the land in dispute.

I have heard learned counsel for the petitioner at length and with his assistance gone through the paper book.

Learned counsel for the petitioner has argued that under Order 26 Rule 9 CPC, the Court has discretion to appoint a Local Commissioner and the Civil Judge has failed to exercise its discretion vested in it. It is further contended by the learned counsel for the petitioner that one of the issue involved is who is in possession of the suit property.

I have considered the submissions made by the learned counsel for the petitioner.

Order 26 Rule 9 CPC provides for appointment of the Commission to make local investigation. However, such power is only if the Court deems it proper that local investigation is required for the purpose of elucidating any matter in dispute. In this case, the Court has found that local investigation is not found to be requisite or proper for the purpose of elucidating any matter in dispute. I do not find any reasons to interfere with the aforesaid reasoning.

Further, it is well settled that Local Commissioner under Order 26 Rule 9 CPC cannot be appointed to determine which party is in possession. That issue can only be adjudicated upon by the Court. The

Commission cannot be delegated such powers.

At this stage, it would be relevant to note here that two Division Benches of this Court have held that revision petition against the decision on the application for appointment of the Local Commissioner is not maintainable. Two Division Benches are reported as *1979 Punjab Law Journal 562* and *1990(2) Punjab Law Reporter 195*. When confronted with this, learned counsel for the petitioner came up with an argument that scope of jurisdiction under Article 227 is much wider. No doubt, the power under Article 227 of the Constitution of India is wider but it is only the power of Superintendence. Under the powers of Superintendence in normal circumstances, Court would not like to interfere when an application for appointment of the Local Commissioner is decided.

In these circumstances, there is no merit in the present petition, hence same is dismissed.

18.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No