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

Sr. No.116

CR No.457 of 2017

DECIDED ON: February 08, 2017

CHAMAN LAL

..PETITIONER

VERSUS

SUMESH PAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Gaurav Singla, Advocate,
for the petitioner.

JASPAL SINGH, J.

Challenge in this revision petition preferred under Article 227 of the Constitution of India is to the order dated November 11, 2016 (Annexure P-5) passed by learned Civil Judge (Jr. Divn.), Faridabad, whereby an application moved by the petitioner under Order XXVI Rule 9 read with Section 151 CPC for appointment of Local Commissioner has been dismissed.

2. While assailing the impugned order dated November 11, 2016, it has been argued with vehemence by the learned counsel for the petitioner that the same is absolutely against the settled canons of law with regard to

the appointment of Local Commissioner. The only ground made by learned trial court for declining an application for appointment of Local Commissioner is that no Local Commissioner can be appointed for collection of evidence to assist a particular party. In fact, it is well settled that when there is any dispute regarding the nature and description of the property, the appropriate remedy is to get the property demarcated by appointment of Revenue Official as Local Commissioner. Otherwise also, the specific case of the petitioner/plaintiff is that respondent/defendant be restrained from interfering in his peaceful possession over the property in dispute as well as from encroaching upon in any part thereof and also from demolishing the construction existing in the disputed property. Besides this, the petitioner has also sought the mandatory injunction.

3. While concluding his argument, learned counsel has submitted that thus to know the actual and factual position and to defeat the false defence, the appointment of Local Commissioner is necessary and the report submitted by him would clinch the entire controversy. As such, the impugned order being against the spirit of Order XXVI Rule 9 CPC is liable to be set aside. Consequently, an application for appointment of Local Commissioner deserves to be allowed.

4. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner and has perused the impugned order available on file.

5. No doubt, under Order XXVI Rule 9 CPC empowers the court to issue a commission to make local investigation which may be required for the purpose of elucidating any matter in dispute. But the object of

appointing the Local Commissioner is not to collect evidence to assist a particular party. The appointment of Local Commissioner has sought by the petitioner in the instant case just to know the actual and factual position at the spot and to defeat the false defence. For that purpose, no Local Commissioner can be appointed. The parties have to stand on their own legs to prove their respective claims. In the instant case, there is/was no requirement for the appointment of Local Commissioner which has been declined by the trial court vide impugned order dated November 11, 2016. Thus, this court is of the considered view that impugned order is perfectly legal and valid and does not call for interference by this Court.

6. Accordingly, instant petition stands dismissed.

February 08, 2017
Ankur

(JASPAL SINGH)
JUDGE

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