

In the High Court of Punjab and Haryana at Chandigarh

CR-5563 of 2017

Date of Decision: 21.8.2017

Usha and others

---Petitioners

versus

Smt. Sarita Rani and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Madan Sandhu, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition directs challenge against order dated 18.7.2017 passed by the Civil Judge (Junior Division), Rohtak whereby application under Order 26 Rule 9 of the Code of Civil Procedure (In short “CPC”) for appointment of local commission to visit the spot and report about actual and factual position of the suit property has been dismissed.

A brief backdrop of the case is that Sarita Rani-respondent No. 1 filed a suit for permanent injunction restraining the defendants from laying any water pipe line or any other pipe line in the plot, detailed in para 1 of the plaint stated to be purchased by her vide sale deed No. 10076 dated 9.2.2007. Plea of the two sets of defendants is that defendant Nos. 3 to 7 have already been provided with facility of drinking water pipe line from the rising main line and the defendants are regularly paying bills to the public authorities (defendant Nos. 1 and 2). In the written statement filed

by the private defendants, it is pleaded that there exists a pucca cement concrete gali 14' 6" wide leading to the house of the answering defendants. The aforesaid *gali* is the passage for ingress and outgress of house of the answering defendants. There also exists sewerage line, water connection line and street light in the aforesaid *gali*.

Counsel for petitioners/defendant Nos. 3 to 7 would urge that no prejudice would be caused to the respondent-plaintiff by appointment of a local commission. It is further submitted that if a local commission is appointed and a report is submitted to the Court, it will help in resolving the controversy effectively and properly by depicting the correct position of the suit property. The impugned order may be set aside with a direction to the court below to appoint local commission as prayed.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned but find that the petition is devoid of merit and deserves to be dismissed.

As the petitioners as well as their co-defendants have categorically pleaded that there exists a gali, passage and pipe lines have already been laid in the said gali for the purpose of sewerage and water connection, street light etc., it is for the petitioners to prove existence of *gali* as well as pipe lines stated to be already installed. As per the settled position in law, no litigant can use process of Court for the purpose of collecting evidence.

Rule 9 of Order 26 empowers the court to make local investigation for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits. There is no such provision that a

local investigation is to be conducted by the Court to ascertain the existing position at the spot. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

However, if the trial court at any later stage of the proceedings would feel that appointment of Local Commission would elucidate the matter in dispute, it would be at liberty to pass an order in regard to Local investigation.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

21.8.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No