

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

**CR No.6371 of 2016.**

**Date of Decision: 08.05.2017.**

Kuldeep Singh

....Petitioner.

**VERSUS**

Sukhwinder Singh and others

....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. Jatinder Singla, Advocate for the petitioner.

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**SNEH PRASHAR, J.**

Challenge in this petition is to the order dated 22.08.2016 passed by learned Additional Civil Judge (Senior Division), Sangrur by virtue of which the application of the respondents-defendants seeking appointment of local commission was allowed.

The submissions made by Mr. Jatinder Singla, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argues that by way of the present suit, the petitioner-plaintiff claimed to be owner in possession of Khasra No.491/101(0-1) situated in the revenue estate of village Balian, Tehsil and District Sangrur. The ownership of the petitioner-plaintiff qua Khasra No.491/101 and the fact that the respondents-defendants have no right, title or interest in the same, is not a matter in dispute. If at all, it is the plea of the respondents-defendants that there is some passage adjoining to

producing relevant revenue record and cannot seek appointment of local commission for the purpose of collecting evidence for them. The report of the local commission would not be competent to over-ride the entries in the revenue record. All kinds of passages in existence are reflected in the revenue record and a local commission is not required to be appointed for stating about their existence. To support his evidence that local commission cannot be appointed to collect evidence, learned counsel relies upon ***Gurpartap Singh @ Gulpavitar Singh vs. Jagmeet Singh, 2015(1) PLJ 691; M/s Tatvadarsha Bandhu Pvt. Ltd. vs. Municipal Corporation, Faridabad and another, 2015(2) PLJ 349; and Om Parkash vs. Kishan Chand and others, 1996(3) R.C.R. (Civil) 737.***

Admittedly, the suit filed by the plaintiff for permanent injunction is with regard to Khasra No.491/101(0-1) Pukhta. As mentioned by learned trial court in the impugned order, in his reply to the application for appointment of local commission filed by the respondents-defendants, the petitioner-plaintiff submitted that he and his nephew Gursimrat Singh have raised construction over Khasra No.491/102 and have also installed two gates in the boundary wall which open on the space brick paved by the Gram Panchayat and on both side of which a drain has been constructed. The allegation of the respondents-defendants is that the plaintiff and his brother have constructed the boundary wall encroaching upon the street which has been metaled (made pucca) by the Gram Panchayat by constructing a drain on both sides of the street for disposal of waste water. The reasons given for appointment of local commission by learned trial court are as under:-

*“It is the specific claim of the plaintiff that he is owner*

*in possession of land comprising in Khasra No. 491/101. To the contrary, it has been alleged by the defendants that said land is part of public street, which has been brick paved by the Gram Panchayat of the Village. While filing reply to the instant application, it has been alleged by the plaintiff that he has actually raised boundary wall around khasra no. 491/102 and has raised construction in the said khasra number. Therefore, from the combined reading of the contents of the plaint and reply to the instant application, it becomes clear that plaintiff has taken two kinds of stands in the pleadings. Whereas at one point, he has claimed possession over khasra no.491/101, yet, on the other hand, he has claimed to have raised construction over khasra no. 491/102. Therefore, it has become necessary to get the suit property demarcated in order to find out real state of affairs. Since the property bears khasra number, therefore, rather than appointing the local Commissioner for seeing the actual and factual position, the better option would be to appoint the local commissioner to demarcate the suit property and to determine as to in which khasra number, construction has been raised by the plaintiff and what is the existing state of affairs in khasra no. 491/101.*

Learned counsel for the petitioner could demonstrate no illegality or perversity in the order of learned trial court. When the plaintiff-petitioner claims to be owner of Khasra No.491/101 and also claims that he has purchased share in Khasra No.491/102 and raised construction thereon, there should be no reason for him to hesitate in getting the said Khasra

numbers demarcated. Order XXVI Rule 9 of the Code of Civil Procedure empowers the Court to appoint a local commission to make local investigation, which is necessary for the purpose of elucidating any matter in dispute. The object of local investigation is not to collect evidence for either of the parties but to obtain such evidence which would be requisite or proper for determination of a factum. When the property in suit can be well identified by Khasra numbers, the appointment of a revenue official as a local commission to demarcate the Khasra numbers and report about the actual and factual position at the spot, would naturally help adjudication of the matter in dispute effectively and completely.

There being no illegality, perversity or jurisdictional error warranting interference in the order of learned trial Court, the petition is hereby dismissed.

**(SNEH PRASHAR)**  
**JUDGE**

**08.05.2017.**  
*jitender sharma*

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**