

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

**C.R. No. 8551 of 2016
Date of Decision:- 17.01.2017**

RameshwarPetitioner

vs.

Virender Kumar and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.P. Sharma, Advocate,
for the petitioner.

DAYA CHAUDHARY, J. (Oral)

The present petition has been filed to challenge impugned order dated 13.10.2016 passed by learned Additional Civil Judge (Sr. Division), Kanina vide which the application for appointment of Local Commissioner has been rejected.

Learned counsel for the petitioner submits that to ascertain the actual possession of the parties, the appointment of Local Commissioner is necessary and no prejudice is going to be caused to the other side. Learned counsel has also relied upon judgment of this Court passed in case **Sohan Lal vs. Surinder**, 1995 (2) RRR 323 in support of his contention.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order dated 13.10.2016.

The application has been moved by petitioner-defendant during pendency of the suit for appointment of the Local Commissioner to ascertain the actual possession which has been dismissed by learned

Additional Judge vide order dated 13.10.2016 by holding that factum of possession can be proved by leading evidence in the shape of oral and documentary by the parties in their own capacity and no Local Commissioner can be appointed to prove the possession over the suit property. It is not disputed that both the parties are claiming their respective possession over the suit property but since the petitioner is defendant and it is for the plaintiff to prove his possession over suit property. Oral as well as documentary evidence can be led and it cannot be said at this stage that no evidence is available. It is for the Civil Court to see as to whether which party is in possession. There is no requirement of appointment of Local Commissioner at this stage. Nothing can be said at this stage as the factum of possession is a matter of evidence to be proved in the suit.

No ground is made out to interfere with the impugned order and the civil revision being devoid of any merit, is hereby dismissed.

January 17, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes