

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

Sr. No.115

C.R. No.5142 of 2018 (O&M)

Date of decision: 21.11.2018

Avtar Singh

....Petitioner

versus

Manjit Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. B.S. Jaswal, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 20.07.2018 passed by the Civil Judge (Junior Division), Dasuya (for short – the Trial Court) through which an application preferred by the petitioner for appointment of a Local Commissioner has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein permanent injunction to restrain the respondents, who were the defendants in the suit from throwing any waste material in the common village chowk. On being put to notice, the respondents appeared before the Trial Court and contested the petitioner's claim. Thereafter, the Trial Court framed issues. During midst of leading his evidence, the petitioner filed an application under Order 26 Rule 9 CPC seeking therein appointment of a Local Commissioner to visit the spot and to remove the earth upto 2 feet

deep to ascertain whether the area underneath the earth, had been made pucca by laying of bricks. Such application was dismissed by the Trial Court occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

Through the application filed by the petitioner, he sought appointment of a Local Commissioner to visit the village chowk and then remove the earth thereupon upto 2 feet to ascertain whether the area under the earth was brick lined. Through such a prayer made by the petitioner, he seeks to use the Trial Court for collecting evidence for him which is beyond the scope and objects of Order 26 Rule 9 CPC. To plead and prove his case, the petitioner has to collect evidence on his own and stand on his own legs. The Trial Court cannot be used for the same.

Dismissed.

(DEEPAK SIBAL)
JUDGE

November 21, 2018

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