

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 128

CR-5439-2018

Date of decision : 21.08.2018

Musafir

..... Petitioner

VERSUS

Jamil Hasan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Namit Khurana, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 11.05.2018, passed by the District Judge, Yamuna Nagar (for short, the Appellate Court), through which the application filed by the petitioner for appointment of a Local Commissioner has been rejected.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the respondents filed a suit seeking therein permanent injunction to restrain the petitioner, who was the defendant in the suit, from dispossessing them from the suit property which was detailed and described in the headnote of the plaint. Upon notice, the petitioner appeared before the Trial Court and denied the claim so set up by the respondents. The Trial Court after sifting the evidence which had come on record, through judgment and decree dated 28.01.2014, decreed the respondents' suit. The petitioner challenged such judgment and decree before the Appellate Court during the pendency whereof the petitioner filed an application under Order 41 Rule 27 CPC to prove agreement dated 11.11.2002 on the basis of which he staked his claim over the suit property.

Such application was allowed by the Appellate Court and a direction was

issued to the Trial Court to submit a report to the Appellate Court after recording evidence of both the parties with regard to the genuineness of the aforesaid agreement. Thereafter another application under Order 41 Rule 27 CPC was filed by the petitioner and during the pendency thereof an application was filed by him for appointment of a Local Commissioner to inspect the suit property and then give a report. The Appellate Court rejected such application. It is such order which is the subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the Appellate Court erred in rejecting the petitioner's application as only the Local Commissioner could opine as to who was in actual physical possession of the suit property which would go to the root of the matter. He further submits that the Local Commissioner would further give a report as to who had installed electricity meter in the suit property.

The afore submissions made by learned counsel for the petitioner have been considered but no merit in the same is found.

It is not disputed that the Trial Court granted to the petitioner adequate opportunities to cross examine all the witnesses produced by the respondents/plaintiffs as also to lead his own evidence. In spite of the same, having lost before the Trial Court, during the course of his appeal, the petitioner moved as many as two applications under Order 41 Rule 27 CPC one of which was allowed by the Appellate Court. As if this was not enough, now the petitioner sought to use the Appellate Court to collect evidence for him in the shape of appointment of a Local Commissioner to inspect the suit property and then submit his report as to who was in possession and which of the parties had installed the electricity meter there.

As noted above, the petitioner has already been granted adequate opportunities by the Trial Court not only to cross examine the respondents' witnesses but also to lead his own evidence. In spite of the same he failed to prove his case resulting in the respondents' suit being decreed. During the pendency of his appeal he cannot use the Appellate Court to collect evidence for him especially when it is admitted before me that the the electricity meter was installed even before filing of the suit and therefore this fact was within his knowledge at that time itself.

In view of the above, no merit is found in the present petition.

Dismissed.

21.08.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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