

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.5904 of 2017 (O&M)

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Date of decision:16.5.2018

Dalbir Kaur

.....Petitioner

v.

Surinder Kaur and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. G.S. Sirphikhi, Advocate for the petitioner.

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Inderjit Singh, J.

Dalbir Kaur-petitioner/plaintiff has filed this civil revision petition against Surinder Kaur, Azad Singh Laddi and Jatinder Kaur-respondents/defendants under Article 227 of the Constitution of India for setting aside the impugned order dated 7.8.2017 (Annexure-P.6) passed by the learned Additional Civil Judge (Senior Division), Batala, vide which the application filed by defendants No.1 to 3 (respondents herein) for the appointment of Local Commissioner, has been allowed.

Notice of motion has been issued in this case, but no one has put in appearance on behalf of the respondents to contest this civil revision petition.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that Dalbir Kaur-plaintiff filed the suit for permanent injunction restraining the defendants from interfering in the possession or dispossessing the plaintiff from the land measuring 1 Kanal 13 Marlas as fully described in the head note of the plaint illegally, forcibly and without due course of law.

During the pendency of proceedings, an application was filed by the defendants for appointment of Local Commissioner by stating that the suit had been filed by concealing the material facts from the Court with regard to the suit property. It had been further pleaded by the applicant that the defendants had already filed one civil suit which is pending in the Court of Civil Judge (Junior Division), Batala, in which the suit property is the same. It had also been pleaded that the site plan, which was filed by the plaintiff, is wrong and no proper adjudication can be done in the absence of correct site plan. It had further been pleaded by the counsel for the applicants that to elucidate the controversy involved, the Local Commissioner is liable to be appointed to report with regard to the actual and factual position at the spot.

The plaintiff in the reply stated that the site plan filed by the plaintiff is correct as per the ground reality. Besides, this, no Local Commissioner can be appointed where documentary evidence is available.

The learned Additional Civil Judge (Senior Division), Batala, observed in impugned order that the suit property is comprised in Khasra Numbers 388/1 and 388/2. The property comprised in Khasra No.388/2 is not reflected as "Gair Mumkin Abadi" whereas claim of the plaintiff in the present case is that she is residing in a house constructed on the above said

numbers. The lower Court held that it will be in favour of the plaintiff itself if a Local Commissioner is appointed with regard to report the actual and factual position at the spot and also to report as to whether there is only one portion of house as asserted by the plaintiff or various portions as asserted by the defendants.

A perusal of the record shows that appointment of Local Commissioner, in no way, amounts to collecting evidence for any of the parties nor the appointment of Local Commissioner amounts to delegate the powers of the Court, to decide the main controversy. Rather, the Local Commissioner is appointed so as to know the actual and factual position at the spot. It is case of the plaintiff that the site plan of land in question shows that she is residing in the house whereas the defendants say that there is not one portion, there are other portions of the house also. So to reach at the correct conclusion and to decide the rights of the parties substantially and finally between them, the order of appointment of Local Commissioner is correct. No illegality has been committed by the lower Court by appointing the Local Commissioner. The impugned order dated 7.8.2017 passed by the learned Additional Civil Judge (Senior Division), Batala, is correct as per law, which does not require any interference from this Court.

Therefore, finding no merit in this civil revision petition, the same is dismissed.

May 16, 2018.

(Inderjit Singh)
Judge

hsp

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