

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

Sr. No.125

CR-6458-2018

Date of decision: 26.09.2018

Ajaib Singh

....Petitioner

versus

Nirmal Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Vikas Gupta, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 18.09.2018 passed by the Civil Judge (Junior Division) Tarn Taran (for short – the Trial Court) through which an application filed by the respondents under Order 26 Rule 9 CPC for appointment of a Local Commissioner has been allowed.

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 dispossessing him from the property detailed and described in the head note of the plaint (for short – the suit property). On being put to notice, the respondents appeared before the Trial Court and filed their written statement through which they denied the petitioner's

claim. In view of the dispute on facts between the parties, the respondents filed an application under Order 26 CPC Rule 9 CPC seeking appointment of a Local Commissioner to inspect the site in question and then submit a report. The Trial Court allowed the respondents' application occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

The case set up by the petitioner in his plaint is that the suit property is ancestral in nature and that there is a Haveli adjoining the petitioner's house which is being used by the petitioner for tying cattle, storing of cattle waste etc. According to the petitioner, he had fenced the aforesaid Haveli with bricks and plants and since the respondents were interfering with his peaceful possession he had no other option but to file a suit for injunction. In response to the afore pleadings, the respondents have submitted that there is no Haveli and that at the place where the petitioner alleges that there is a Haveli, in fact there is a pond which is common to the entire village and through his suit, the petitioner is seeking to encroach upon that pond.

In view of the above dispute, to facilitate the Trial Court to reach at a just decision, on an application filed by the respondents, it has appointed a Local Commissioner to go to the spot and submit a report as the Trial Court was of the view that the dispute between the parties could be resolved through a visit to the spot. No fault is found with such order.

Even otherwise, the report of the Local Commissioner is yet to come and therefore, it is a cause of wonder as to why the petitioner is apprehensive that the same would be against him. Even if the report is

against the petitioner he is at liberty to file objections to the same which would be considered in accordance with law. Thus, in either case he is not put to any prejudice.

Dismissed.

September 26, 2018
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(DEEPAK SIBAL)
JUDGE

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