

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

Civil Revision No.864 of 2018.
Decided on:-February 09, 2018.

Balwinder Singh and another

.....Petitioners.

Versus

Sukhjinder Singh Namberdar and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ravi Chadda, Advocate
for the petitioners.

HARI PAL VERMA, J. (Oral)

The petitioner-defendants have filed the present petition under Article 227 of the Constitution of India impugning the order dated 29.11.2017 passed by learned Additional Civil Judge (Senior Division), Mukerian, whereby the application filed by the respondent-plaintiff under Order XXVI Rule 9 read with Section 151 CPC for appointment of Local Commissioner was allowed and the Local Commissioner was appointed to ascertain the encroachment, if any, made by the petitioners over the suit property.

Learned counsel for the petitioners has argued that earlier also, the respondent-plaintiff had moved an application under Order VI Rule 17 CPC seeking amendment of the plaint on the similar pleas so as to amend his plaint to the effect that during the pendency of the suit, the petitioner-defendants have encroached upon some portion of the suit property forcibly

and illegally and, therefore, relief of mandatory injunction is required to be sought in the suit. However, the said application was dismissed by the trial Court vide order dated 04.08.2017 as the respondent-plaintiff had not mentioned the area and dimensions of encroachment in the application.

He has further argued that even the application filed by the respondent-plaintiff under Order XXVI Rule 9 CPC seeking appointment of Local Commissioner was made on 22.01.2015. Thereafter, learned trial Court had dismissed the application under Order VI Rule 17 CPC for amendment of the plaint vide order dated 04.08.2017 and, therefore, there was no justification to appoint the Local Commissioner on the application under Order XXVI Rule 9 CPC vide impugned order dated 29.11.2017.

I have heard learned counsel for the petitioners.

No doubt, the application under Order XXVI Rule 9 CPC for appointment of Local Commissioner was filed on 22.01.2015 and, thereafter, the respondent-plaintiff had filed an application under Order VI Rule 17 CPC seeking amendment of the plaint so as to incorporate the prayer of mandatory injunction and the said application was dismissed by the trial Court vide order dated 04.08.2017. It is thereafter, the application under Order XXVI Rule 9 CPC has been taken up and decided by the trial Court vide impugned order dated 29.11.2017 so as to ascertain whether or not the petitioner-defendants have encroached upon the suit property and raised a wall and installed a gate during the pendency of the suit.

The identity of the suit property is not disputed, but the limited purpose for appointment of the Local Commissioner is to ascertain the fact

that as to whether the petitioner-defendants have encroached upon the suit property after filing of the suit in the manner stated in the application. Even otherwise, in case the petitioner-defendants are aggrieved with the report of the Local Commissioner, they are at liberty to file objections to such report. Therefore, this Court does not find any illegality in the impugned order dated 29.11.2017 passed by the trial Court.

Accordingly, the impugned order dated 29.11.2017 passed by learned Additional Civil Judge (Senior Division), Mukerian is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

However, so far the prayer of learned counsel for the petitioners for early disposal of the suit on the ground that the suit was filed in the year 2013 and the petitioner-defendants are Non-Resident Indians is concerned, the same carries weight.

Accordingly, the trial Court is directed to make an endeavour to decide the suit expeditiously.

February 09, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No