

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

**RSA No.5040 of 2016 (O&M)
Date of Decision.15.11.2018**

Jhirmal Singh and others

...Appellants

Vs

Santokh Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramandeep Singh, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.13085-C of 2016

For the reasons stated in the application, delay of 24 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.5040 of 2016

The appellants-defendants have not been successful in
defending the suit for possession after remand by the lower Appellate
Court, which has been decreed on the basis of demarcation report,
which has gone rebutted.

Mr. Ramandeep Singh, learned counsel appearing on
behalf of the appellants-defendants submitted that it was obligatory
upon the Court to examine the local commissioner, who gave the
report and therefore, the same could not have been looked into. In
support of aforementioned submission, relied upon judgment passed
by this Court in **Roshan Lal Vs. Jai Singh and others 2015 (4) RCR**
(Civil) 1032 wherein while interpreting the provisions of Order 26
Rule 9 CPC, it was held that for any clarification, in case report was

vague, Court could have issued second local commissioner. In the instant case no such effort was made.

I am afraid aforementioned argument of Mr. Ramandeep Singh is not sustainable, for, as per the provisions of sub-rule 2 of Rule 10 of Order 26 CPC, if all, there was any doubt in the mind of the defendant, they could have easily taken the assistance of the Court to examine the local commissioner, who gave the report. For the sake of brevity sub-rule 2 of Rule 10 of Order 26 CPC reads as under:-

“(2) Report and depositions to be evidence in suit. Commissioner may be examined in person - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.”

In my view, in the absence of availment of such remedy, the Court had rightly decreed the suit. I do not find any illegality and perversity rendered in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018
Pankaj*

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No