

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 119

CR-8440-2018 (O&M)

Date of decision : 13.12.2018

Maninder Kaur and another

..... Petitioners

VERSUS

Amandeep Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. J. S. Brar, Advocate, for the petitioners.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 17.10.2018, passed by the Civil Judge (Junior Division), Zira (for short, the Trial Court) allowing the application filed by respondent No. 1/plaintiff under Order 26 Rule 9 CPC for appointment of a Local Commissioner. Also under challenge is the order dated 26.10.2018, passed by the Trial Court through which an application filed by the petitioners seeking therein fifteen days' time to file a revision petition against the aforesaid order dated 17.10.2018 has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No. 1-Amandeep Singh filed a suit seeking therein a declaration to the effect that he alongwith proforma respondent No. 2-Gurinder Singh be declared to have a right of way/passage shown by the words ABCD in red colour in the site plan attached with the plaint. Consequential relief of permanent injunction to restrain the petitioners, who were defendants No. 1 and 2 in the suit, from interfering in the peaceful use of the aforesaid passage by respondent No. 1 was also sought. On being put to notice, the petitioners appeared before the

Trial Court and filed their written statement through which they *inter alia* denied the existence of the passage marked by respondent No.1 in his suit by the words ABCD. According to them, the 8 marlas of land which respondent No. 1 was claiming to be a passage, was agricultural land to be used for agricultural purposes only. In view of the above dispute, respondent No. 1 filed an application under Order 26 Rule 9 CPC seeking therein appointment of a Local Commissioner to visit the site and then give a report with regard to the existence of the above passage as claimed by him. The petitioners filed a reply to the application filed by respondent No. 1 and resisted the prayer made therein. After considering the rival contentions raised by both the parties, the Trial Court allowed the application filed by respondent No. 1 through the order which is under challenge in the present proceedings.

Learned counsel for the petitioners has been heard.

Through his suit respondent No. 1/plaintiff had sought a declaration to the effect that he, alongwith proforma respondent No.2- Gurinder Singh, had a right to use the passage shown by him by the words ABCD in red colour in the site plan attached to his plaint. In the written statement, the petitioners, who were the only contesting defendants in the suit, outrightly denied the existence of the passage as shown by respondent No. 1. They further stated that the land shown by respondent No. 1 as a passage was in fact agricultural land being used only for agricultural purposes.

Whether or not there exists a passage at the spot, is, thus, an issue which goes to the root of the matter and in view of the above divergent

claims, the Trial Court has appointed an Advocate as a Local Commissioner to go to the spot and submit a report as to whether a passage, as claimed by respondent No. 1/plaintiff, exists or not. Such order passed by the Trial Court warrants no interference in revisionary jurisdiction especially when if the report of the Local Commissioner is adverse to the rights of the petitioners they have a right to file their objections to the report as also the right to cross-examine the Local Commissioner if and when he is produced as a witness.

Dismissed.

13.12.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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