

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

**CR No.1045 of 2018
Date of decision: 01.10.2019**

Municipal Committee Ladwa

....Petitioner

Versus

Hari Ram

....Respondent

Coram: Hon'ble Mr. Justice B.S. Walia

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

Mr. Darshan Gulati, Advocate for Mr. J.S. Saneta, Advocate for
the respondent.

B.S. Walia, J. (Oral)

Challenge in the revision petition is to order Annexure P-5 dated 03.11.2017 vide which the application of the petitioner-defendant for appointment of a Local Commissioner/Revenue Officer for demarcation of the suit land to ascertain whether the property in question is situated in Budha Baba Johar or somewhere else was dismissed.

2. Learned counsel contends that the impugned order is liable to be set aside and the prayer for appointment of Local Commissioner allowed.

3. Brief facts of the case leading to the filing of the revision petition are that the learned trial Court vide order Annexure P-5 dismissed the application. *inter alia*, on the ground that in a suit for injunction, the question as to who is in possession of the property is a matter to be decided by the Court on the basis of evidence, oral or documentary to be adduced by the parties and that said function cannot be delegated to a Commissioner to find out as to who is in possession of the property.

3. Learned counsel for the petitioner contends that the order of the learned trial Court does not take into account and is contrary to the prayer made in the application, namely, for ascertaining as to whether the property in question is situated in Budha Baba Johar or elsewhere and that the petitioner confines his prayer only to the aforementioned extent.

4. Learned counsel for the respondent states that in view of the statement of learned counsel for the petitioner, he does not oppose the prayer for demarcation of the suit land to ascertain whether the suit property is situated in Budha Baba Johar or elsewhere.

5. In view of the statement of learned counsel for the parties as well as decision of this Court in **Baljinder Singh vs. Sukhdev Singh 2011(1) CCC 810 (P&H)**, as per which a Local Commissioner can be appointed to report about the actual and factual position of the land in dispute, revision petition is allowed and the impugned order is set aside.

6. Parties are directed to put in appearance before the learned trial Court on the next date whereupon the learned trial Court shall appoint a Local Commissioner for the purpose of demarcating the suit property to ascertain as to whether the same is situated in Budha Baba Johar or elsewhere.

7. Revision petition allowed in the aforementioned terms.

October 01, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No