

CR-644-2017 (O&M)

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

**CR-644-2017 (O&M)
Date of decision : 14.01.2019**

Jarnail Singh and another

... Petitioners

Versus

Satnam Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Amit Arora, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby at the initial stage of the suit of appearance of the petitioners-defendants, the respondent-plaintiff moved an application for appointment of Local Commissioner to inspect the spot in a suit for injunction seeking restraint order against the defendants not to install the gate in front of the house of the respondent-plaintiff, has been allowed.

Learned counsel appearing on behalf of the petitioners submitted that the purpose of the local commissioner is not to create evidence as the plaintiff had to stand on his own legs and prove the case in support of the proceedings. Though this Court, vide order dated 31.01.2017, had stayed the operation of the impugned order and the suit has reached at

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defendant's evidence. The plaintiff even did not take any appropriate step while leading evidence in affirmative. It would be farcical exercise as the reasoning assigned in the application is bereft of any logic.

Learned counsel for the respondent-plaintiff submitted that no harm and prejudice would be caused to the petitioners-defendants as the defence in the written statement reveals that they had purchased the property and wanted to protect it by raising the gate, but without demarcation or the report of the local commissioner, the suit cannot be decided, therefore, the order under challenge is perfectly legal and justified, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gupta, for, the stage on which the application was submitted, was totally premature. The case is always built on evidence, even if, the issues were not framed. The plaintiff had to lead evidence in affirmative and could not have waited the outcome of the revision petition. Be that as it may, the impugned order, under challenge, is not sustainable in the eyes of law, much less, suffers from illegality and perversity and the same is hereby set aside. The present revision petition stands allowed.

14.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No