

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7173 of 2016(O&M)
Date of Decision: 26.08.2019

Sukhbir Singh

.....Petitioner

Versus

Devinder and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Gurcharan Dass, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been filed by the petitioner against the order dated 05.07.2016 passed by Civil Judge (Junior Division)-cum-Judicial Magistrate First Class, Panipat, vide which application under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner was rejected.

[2]. Plaintiff filed a suit for mandatory injunction, directing the defendants to remove the walls having definite dimensions allegedly constructed in the land as shown in the plaint and for permanent injunction, restraining the defendants from raising further construction thereon.

[3]. Plaintiff asserted that all the legal heirs of deceased Dharma and Lakhmi have been cultivating the land according to their shares. The dispute is regarding construction of walls for which it has been claimed that defendants have no right, title or interest. The plea of the plaintiff has been denied by the defendants. The factum of assertion made by the plaintiff and denial by the defendants is sought to be ascertained by way of appointment of Local Commissioner i.e.

“Whether the defendants/respondents have raised construction of the walls over the land comprised in rectangle No.49 killa No.7/1/1 or on some other land?”

[4]. It is a settled principle of law that the Court cannot be instrumental in collecting evidence for either of the parties. The order declining to appoint Local Commissioner is not revisable in view of ratio laid down in **Harvinder Kaur and another Vs. Godha Ram and another, 1979 PLJ 562 DB.** The view expressed in **M/s Mohinder Kumar Rajinder Parkash Dalmir Singh @ Dalmira and Mangal Singh and another Vs. Piara Lal, 1971 PLR 531** can also be relied in this context.

[5]. No substantial right of the plaintiff has been adjudicated by declining the prayer for appointment of Local Commissioner. Plaintiff/petitioner would be at liberty to lead substantive evidence to prove his case. Supervisory jurisdiction of the High

Court in terms of Article 227 of the Constitution of India cannot be invoked in facts and circumstances of the present case. This revision petition is accordingly dismissed.

26.08.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No