

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 844-2018(O&M)

Date of decision: 29.10.2019

Amarjit Singh

.....Petitioner

versus

Darshan Singh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr.J.S.Dadwal, Advocate for the petitioner

Deepak Sibal, J. (Oral)

The present petition is directed against the order dated 09.01.2018 passed by Civil Judge (Junior Division), Ludhiana (for short, the Trial Court), dismissing an application filed by the petitioner under Order 26 Rule 9 read with Section 151 CPC for appointment of a Local Commissioner to visit the suit property and report about the actual and factual position of the same.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent nos.1 to 3 filed a suit seeking therein to restrain the petitioner as also respondent nos.4 and 5 from dispossessing them from a plot measuring 5 marlas detailed and described in the head note of the plaint (for short, the suit property). The petitioner, as also respondent nos.4 and 5, were further sought to be restrained from interfering in the plaintiffs' alleged possession of the suit property and from damaging / demolishing the same. On being put to notice, the petitioner, who was defendant no.1 in the aforesaid suit filed by respondent nos.1 to 3, appeared before the Trial Court and contested the

suit. Thereafter, the trial Court framed issues on which respondent nos.1 to 3/ plaintiffs led their entire evidence. When the matter was listed for leading of evidence by the petitioner/defendant no.1, an application was preferred by him under Order 26 Rule 9 read with Section 151 CPC for appointment of a Local Commissioner to visit the suit property and to report about its actual and factual position. The Trial Court dismissed the petitioner's application through the order under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

Respondent nos.1 to 3's suit has been filed to restrain the petitioner and respondent nos.4 and 5 from dispossessing them from the suit property. The petitioner and respondent nos.4 and 5 are further sought to be restrained from encroaching upon the same. Respondent nos.1 to 3/ plaintiffs have already led their evidence. In support of the case set up by the petitioner, it is for him to prove the same through leading of cogent evidence. The Court is not supposed to collect evidence for him through appointment of a Local Commissioner, especially, when no demarcation of the suit property is required and that the Trial Court does not feel the necessity of a report from a Local Commissioner to assist it for the just decision of the controversy before it.

In view of the above, the impugned order warrants no interference.

Dismissed.

29.10.2019

gk

(Deepak Sibal)
Judge

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No