

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

Sr. No.117

C.R. No.932 of 2019 (O&M)

Date of decision: 07.02.2019

Sham Sunder

....Petitioner

versus

Shammi

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 21.12.2018 passed by the Civil Judge (Junior Division), Sirsa (for short – the Trial Court) dismissing the application filed by the petitioner seeking appointment of a Local Commissioner.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein specific performance of agreement dated 14.01.2004 with respect to the property detailed and described in her suit (for short – the suit property). On being put to notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and refuted all the claims set up by the respondent. After sifting evidence which had been led by both the parties, through judgment and decree dated 08.06.2011, the Trial Court accepted the respondent's suit. The relevant portion of the decree is extracted below:-

“It is ordered that the suit of the plaintiff succeeds and the same is hereby decree with costs and a decree of possession by way of specific performance is passed in favour of the plaintiff and against the defendant qua the suit land fully detailed in the head-note of the plaint, situated in Gali Chopra Wali, Tehsil and District Sirsa. The defenant is directed to get execute and register the sale deed of suit land within two months from today after receiving the balance sale consideration failing which the plaintiff would be entitled to get the same registered qua the suit land through the intervention of the Court.”

The petitioner appealed against the aforesaid decree which was dismissed by the Appellate Court on 22.11.2013 and through order dated 05.09.2018 his second appeal filed before this Court being **RSA No.808-2014 – Sham Sunder vs. Shammi**, met the same fate as his first appeal. Thereafter, the petitioner took his challenge to the Hon'ble Apex Court but with no success as the Special Leave Petition preferred by him was dismissed by the Hon'ble Apex Court on 14.12.2018.

The respondent filed an execution petition seeking execution of the afore-quoted decree in her favour. In such proceedings, the petitioner filed an application seeking appointment of a Local Commissioner to visit the suit property and give a report with regard to the construction made thereupon. Such application was dismissed by the Executing Court through the order which is the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

The afore-quoted decree dated 08.06.2011 passed by the Trial

Court accepting the respondent's suit does not contain any direction or even a reference with regard to any construction upon the suit property. Such decree has been upheld right up to the Hon'ble Apex Court. It is not disputed that there is also no direction by any Court superior to the Trial Court with regard to any construction on the suit property.

In view of the above, no error is found in the order of the Executing Court declining the prayer made by the petitioner for appointment of a Local Commissioner.

Dismissed.

(DEEPAK SIBAL)
JUDGE

February 07, 2019

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