

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1978 of 2019(O&M)
Date of Decision: 25.03.2019

Kulwant Singh

.....Petitioner

Versus

Lal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. R.S. Manhas, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has challenged the order dated 27.02.2019 passed by Civil Judge (Junior Division), Pathankot vide which the application filed by the plaintiff/petitioner under order 26 Rule 9 CPC was dismissed.

[2]. Plaintiff filed a suit for permanent injunction on the ground that the plaintiff is owner in possession of the house. Defendant is owner of the adjoining plot. Plaintiff has constructed the house over the area as per sale deed, but the defendant has threatened to raise construction on the disputed wall i.e. 'DE' as shown in the site plan.

[3]. Trial Court has rejected the application for appointment of Local Commissioner on the premise that plaintiff has not placed on record any sale deed depicting his title. No revenue record of ownership has been placed on record. Process of the Court cannot be utilized to collect evidence for the plaintiff.

[4]. In view of ratio laid down in **Harvinder Kaur and another Vs. Godha Ram and another, 1979 PLJ 562 DB, M/s Mohinder Kumar Rajinder Parkash Dalmir Singh @ Dalmira and Mangal Singh and another Vs. Piara Lal, 1971 PLR 531** and **Pritam Singh and another Vs. Sunder Lal and others, 1990 PLJ 418**, revision petition against the order declining to appoint the Local Commissioner is not maintainable as no substantive right of the plaintiff is decided by the said order. Refusing to appoint Local Commissioner has not decided any issue on merits. No right of the petitioner has been adjudicated by the Court. Plaintiff would be well within his right to lead his substantive evidence during trial.

[5]. In view of aforesaid legal position, impugned order passed by the trial Court cannot be faulted with. This revision petition is accordingly dismissed.

25.03.2019

Prince

Whether reasoned/speaking
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No