

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

116

CR-2277-2019 (O&M)

Date of decision: 09.04.2019

Kuldip Singh and another

....Petitioners

Versus

Davinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vipin Mahajan, Advocate for the petitioners.

ARUN KUMAR TYAGI, J (ORAL)

1. The petitioners, defendants in Civil Suit No.1200 of 2016 titled Davinder Singh and another Vs. Kuldip Singh and others, have filed the present petition under Article 227 of the Constitution of India challenging order dated 08.03.2019 passed by the learned Additional Civil Judge (Senior Division), Gurdaspur, whereby their application filed under Order 26 Rule 9 of the Code of Civil Procedure (for short 'the CPC') for appointment of Local Commissioner with direction to visit the spot and make a report of actual and factual position along with broad features regarding suit land was dismissed.

2. Briefly stated the facts necessary for disposal of this revision petition as emerging from the revision petition filed by the petitioners-defendants are that the petitioners-defendants filed application dated 13.06.2016 (**Annexure P-1**) titled Kuldeep Singh Vs. Davinder Singh and others against Davinder Singh, Jaspinder Singh and Gurmit Kaur for

correction of Khasra Girdawaries regarding land measuring 5 Kanal, 6 Marlas comprised in Khewat No.7/4/3 Khatoni No.7 Rect. No.19 Killa No.6/1 (5-6) situated in the revenue state of village Ratowal HB No.369, Sub-Tehsil and District Gurdaspur as per Jamabandi for the year 2014-15. before A.C. IInd Grade, Gurdaspur. Vide order dated 07.09.2016 **(Annexure P-2)** learned A.C. IInd Grade, Gurdaspur directed the Patwari Halqa to visit the site to ascertain correct picture and adjourned the application to 21.09.2016. Davinder Singh and Jaspinder Singh, respondents No.1 and 2 in the abovesaid application, filed Civil Suit No.1200 of 2016 titled Davinder Singh and another Vs. Kuldeep Singh and others on 12.09.2016 against Kuldeep Singh, Bikramjit Singh, Inderjit Singh and Avtar Singh for permanent injunction restraining the defendants from dispossessing or interfering in the possession of the plaintiffs over the land measuring 70 Kanals 8 Marlas fully described in the head-note of the plaint **(Annexure P-3)** including land measuring 5 Kanals 6 Marlas out of 7 Kanals 11 Marlas comprised in Rect. No.19 Killa No.6/1 claiming themselves to be owner and possession thereof by virtue of exchange with defendants vide Exchange Deed dated 10.05.2008. The suit was contested by the defendants in terms of written statement dated 21.12.2016 **(Annexure P-4)** inter alia on the ground that the dispute between the parties was regarding land comprised in Rect. No.19 Killa No.6/1(5-6) which was never exchanged by the defendants with father of the plaintiffs. Issues were framed and evidence produced by the parties was recorded. While the case was fixed for rebuttal evidence, the defendants filed abovesaid application under Order 26, Rule 9 of the C.P.C. for

appointment of Local Commissioner which was dismissed by the learned Additional Civil Judge (Senior Division), Gurdaspur vide order dated 08.03.2019.

3. Feeling aggrieved the defendants No.1 and 4 Kuldip Singh and Avtar Singh have filed the present revision petition.

4. I have heard the arguments addressed by learned Counsel for the petitioners and gone through the relevant record.

5. Learned Counsel for the petitioners has argued that the object for enactment of the provisions contained in Order 26 Rule 9 of the CPC for appointment of Local Commission is to ascertain the actual and factual position existing at the spot and to collect the evidence available at the spot for the proper adjudication of the case. The request of the petitioners was for appointment of some independent revenue official for ascertaining the actual and factual position regarding the suit land which would have enabled the Court to decide the matter effectively. The appointment of the Local Commissioner would not in any manner cause prejudice to the rights of the respondents-plaintiffs. The impugned order suffers from material illegality. Therefore, the revision petition deserves to be allowed and the impugned order dated 08.03.2009 is liable to be set aside. In support of his arguments the learned Counsel for the petitioners has placed reliance on the observations of Hon'ble Coordinate Bench of this Court in **CR-5905-2013 titled Harjit Singh Vs. Pargat Singh decided on 09.02.2016**, **CR-6458-2018 titled Ajaib Singh Vs. Nirmal Singh and others decided on 26.09.2018** and **CR-6504-2018 titled Raj Kumar Vs. Tarlok Singh and others decided on 18.01.2019**.

6. Order 26 Rule 9 of the C.P.C. which provides for appointment of local commission to make local investigation reads as under:-

“In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report hereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

7. In the present case, the petitioners-defendants filed application for appointment of Local Commissioner (**Annexure P-5**) with the direction to visit the spot and make a report regarding actual and factual position along with broad features of suit land to help the Court in deciding the case in just and complete manner. The application was dismissed vide impugned order dated 08.03.2019 and the relevant para of the said order reads as under:-

“The present suit has been filed by plaintiffs for permanent injunction restraining the defendants or their agents from interfering into peaceful possession of the plaintiffs over the suit property or dispossessing them from the same and as per pleadings of the plaintiffs their father Shingrara Singh exchanged specific khasra numbers with defendants and since then the plaintiffs are in possession of the suit property and on the other hand, defendants in their written statement have denied any exchange of land between the parties, meaning thereby the fact in issue in the present case is to whether which party is in possession over the suit property. The present application has been filed by applicants/defendants to appoint local commissioner to ascertain the factual position existing at the spot, which fact is not issue in the present case and it is also settled law that local commissioner cannot appointed for collecting evidence. In the present case, fact in issue is with regard to possession over the suit property and the same has to be proved by the parties to suit by leading cogent evidence, which both the parties have already led and

when the case was fixed for rebuttal evidence of the plaintiff as well as for arguments, the present application has been moved by the defendants and it appears that the same has been moved just to delay the proceedings in the present case and otherwise also, there is no merit in the application moved by defendants for appointing local commissioner in the present case as there is no requirement for the same.”

8. It may be observed here that in the present case, the dispute between the parties is mainly as to exchange of land measuring 5 Kanals 6 Marlas referred to above between the defendants and father of the plaintiffs and possession over the same and not regarding the existing location, position or demarcation thereof. It is well settled that where there is a dispute with regard to possession over a parcel of property, the question as to which of the parties is in possession thereof has to be decided by the Court on the basis of the evidence to be produced by the parties. The Court cannot delegate its function to any other agency or instrumentality and Local Commissioner cannot be appointed to assist a party to collect evidence in its favour and to ascertain and report as to which party is in possession of the property in dispute. For judicial precedents reference may be made to **Civil Revision No.7535 of 2016 (O&M) Skynet Enclave Residents Welfare Association & another Vs. Amritpal Singh & others decided on 02.06.2017 and Union of India and another Vs. Kirpal Industries : AIR 1998 (Rajasthan) 224.**

9. I have gone through the judgments relied upon by the learned Counsel for the petitioners in support of his arguments referred to in this order above. In **Harjit Singhs' Case (Supra)** Local Commission was appointed for demarcating the disputed land. In **Ajaib Singh's Case (Supra)**, the petitioner alleged the suit property to be Haveli adjoining his

house which was used by him for tying cattle and storing of cattle waste, while respondents claimed the same to be pond which is common to the entire village and it was in this factual backdrop that Local Commission was appointed by the trial Court which order was upheld by this Court. In **Raj Kumar's Case (Supra)**, the dispute was as to whether the respondent was in occupation of only Khasra No.61/1 as contested by him or was in occupation of any part of Khasra No.61/3 in the revenue estate of Village Jeewan Chak, Tehsil and District Gurdaspur and appointment of Local Commissioner was ordered for ascertaining the encroachment.

10. The facts of the present case are evidently different as in the present case the dispute revolves around the question of possession over the suit land which has to be adjudicated upon by the Court and cannot be delegated to any other agency or instrumentality and Local Commissioner Could not be appointed to assist the petitioners-defendants for collection of evidence in their favour. Therefore, the application has been rightly dismissed and the impugned order does not suffer from any illegality and does not call for any interference.

11. Accordingly, the revision petition, being devoid of any merit, is dismissed.

(ARUN KUMAR TYAGI)
JUDGE

09.04.2019
kothiyal

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