

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 114

Case No. : C. R. No. 5619 of 2019

Date of Decision : September 10, 2019

Karam Singh @ Karam Chand Petitioner

vs.

Tilak Raj Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Satbir Rathore, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 16.08.2019 passed by the Civil Judge (Junior Division), Dasuya (for short – the Trial Court) dismissing the application filed by the petitioner under Order 26 Rule 9 CPC seeking therein appointment of a Local Commissioner.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that the petitioner filed a suit seeking therein to restrain the respondent from dispossessing him from the land measuring 07 marlas, detailed and described in the head note of his plaint (for short – suit property).

On being put to notice, the respondent, who was the sole defendant in the suit, appeared before the Trial Court and disputed the

petitioner's claim. The case set up by the respondent inter alia was that through his suit, the petitioner intended to encroach upon the respondent's property, which was adjacent to the suit property. It was further submitted that it was the respondent who was owner in possession of the suit property and that under the garb of his suit, the petitioner wanted to dispossess him from the suit property.

After framing of issues, the petitioner led his entire evidence. Thereafter, when the respondent had also led most of his evidence, the petitioner filed an application under Order 26 Rule 9 CPC seeking therein appointment of a Local Commissioner to go and inspect the suit property and then submit a report as to who was in possession of the same. Learned counsel appearing for the respondent before the Trial Court submitted that he had no objection if the Local Commissioner, as prayed for by the petitioner, was appointed. However, after considering the merits of the case, the Trial Court dismissed the petitioner's application. Such order is under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

The petitioner had filed a suit seeking therein to injunct the respondent from dispossessing him from the suit property. On the other hand, the case set up by the respondent was that through his suit, the petitioner intended to encroach upon the respondent's land which was adjacent to the suit property.

Admittedly, the petitioner has led his entire evidence and the respondent has also led the substantial part of his evidence. Thus, both

parties have availed of adequate opportunities to lead evidence in support of their respective claims with regard to possession over the suit property. Therefore, the petitioner's application is found to have been rightly dismissed by the Trial Court on the ground that the same has been filed only to use the Court to collect further evidence in his favour as also to fill up any lacuna which might have been left by him while leading his evidence.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 10, 2019

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>