

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 6003 -2019(O&M)

Date of decision: 05.11.2019

Amar Singh

.....Petitioner

versus

Nasib Singh and another

.....Respondents

CORAM: Hon'ble Mr. Justice Deepak Sibal

Present: Mr.Naveen Kumar Jaglan, Advocate for the petitioner

Deepak Sibal, J. (Oral)

The present petition is directed against the order dated 18.09.2018 passed by Civil Judge (Junior Division), Naraingarh (for short, the Trial Court), dismissing an application filed by the petitioner under Order 26 Rule 9 CPC seeking therein appointment of a Local Commissioner to visit the spot for determining the actual and factual position.

After hearing learned counsel for the petitioner and perusing the record of the case, the facts in brief which have emerged are that the petitioner filed a suit seeking therein to restrain the respondents from interfering in his peaceful possession of land detailed and described in the head note of the plaint (for short, the suit property). The respondents were further sought to be restrained from dismantling and removing the constructions made by the petitioner on his suit property.

The case set up by the petitioner was that he was using the suit property for crushing sugarcane through his *Charkhi*. He had constructed a *Kachi Bhatti* under a temporary shed which was used by him to prepare Jaggery and since the respondents were trying to interfere in his peaceful possession, he had instituted his suit.

On being put to notice, the respondents appeared before the Trial Court and denied the petitioner's claim.

The petitioner filed an application under Order 26 Rule 9 CPC seeking appointment of a Local Commissioner to inspect the suit property and give a report regarding the actual and factual position. The Trial Court dismissed the petitioner's application through the order under challenge in the present petition.

Whether or not a *Charkhi*, *Kachi Bhatti* or cemented tanks exist on the suit property are facts to be proved by the petitioner through leading of cogent evidence. The Trial Court rightly rejected the petitioner's application for appointment of a Local Commissioner to inspect the suit property and submit a report with regard to the actual and factual position existing on the suit property as it is not for the Trial Court to collect evidence for the petitioner and prove his possession for him. Even otherwise no issue of demarcation of the suit property is involved in the controversy between the parties and the Trial Court did not consider it just and appropriate to appoint a Local Commissioner to assist it to arrive at a just decision of the case.

Dismissed.

05.11.2019

gk

(Deepak Sibal)

Judge

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No