

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : C. R. No. 8119 of 2018

Date of Decision : February 01, 2019

Anil Kumar Petitioner

vs.

M/s Karnal Spinners Pvt. Ltd.
and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Pankaj Bali, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 02.07.2018, passed by the Civil Judge (Junior Division), Karnal (for short – the Trial Court), dismissing the petitioner's application, through which he had sought 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 and proforma respondents no.3 to 6 filed a suit for possession with the consequential relief of mandatory injunction by directing respondents no.1 and 2, who were the defendants in the suit, to release the land, which was allegedly under illegal possession of respondents no. 1 and 2. They further sought a direction to be issued to respondents no. 1 and 2 to remove the illegal construction

allegedly raised by them over the said land. To assert their rights, the

petitioner/plaintiffs had inter alia relied upon a demarcation report dated 25.05.2014 by the Kanungo of the area.

On being put to notice, respondents no.1 and 2 appeared before the Trial Court and refuted the plaintiffs' claim. It was inter alia submitted that their possession was legal and that the demarcation report relied upon by the plaintiffs was not worthy of reliance as the same had been prepared by its author without visiting the spot as also for the reason that respondents no. 1 and 2 had not been given any intimation with regard to the time of the alleged demarcation.

In view of the above disputes, the trial court framed issues, on which the petitioner/plaintiffs led their entire evidence. While the respondents were in the midst of leading their evidence, the plaintiffs filed an application seeking therein appointment of a Local Commissioner to visit the suit property and give a report with regard to the extent of actual possession of the respective parties at the spot. Such application was considered and rejected by the Trial Court through the order under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

The petitioner had based his case on a demarcation report by the Kanungo, the evidentiary worth of which had been questioned by respondents no. 1 and 2 in their written statement by submitting therein that no notice of the time of demarcation had been given to them. In spite of the above stand taken by respondents no. 1 and 2, no application was filed by the petitioner/plaintiffs before the Trial Court for appointment of Local

Commissioner for fresh demarcation at the time when they led their entire evidence in affirmative. Even otherwise, the petitioner has already relied on a demarcation report by a revenue official and has also led other evidence in its support. The evidentiary value of such report would be considered at the time of final adjudication of the petitioner's suit, of course subject to the evidence to the contrary, which may be led by respondents no. 1 and 2.

The petitioner cannot be allowed to use the Trial Court for collecting evidence on its behalf.

In view of the above, no merit is found in the present petition.
Dismissed.

(DEEPAK SIBAL)
JUDGE

February 01, 2019
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>