

**S.No.120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.1015 of 2020

Date of Decision:04.03.2020

Suman Sharma and others

.....Petitioners

Vs.

Rohit and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. R.K. Bansal, Advocate for the petitioners.

Rajbir Sehrawat, J.(Oral)

This is a petition filed under Article 227 of the Constitution of India, challenging order dated 03.01.2020, passed by the trial Court, whereby, the application filed by the petitioners for appointment of Local Commissioner; so as to report about the existing state of affairs, particularly qua the nature of construction, has been declined by the trial Court.

Shorn off unnecessary details, the facts in brief are that the petitioners have filed a suit for permanent injunction for restraining the defendants from interfering in the possession of the suit property. In that suit, the trial Court had passed a status-quo order vide order dated 20.05.2019. However, the petitioners claimed that after passing of the order of the status-quo, the defendants had raised construction over the suit property. Hence, they have violated the order of the status-quo granted by the trial Court. Accordingly, the application was moved by the petitioners under Order 39 Rule 2(A) CPC for initiating the contempt proceedings against the defendants. In that application, the plaintiffs had asserted that

the defendants had raised a construction of a room and some of the construction material was still lying on the spot. Therefore, the prayer was made to appoint a Local Commissioner so as to determine as to whether the construction had been raised by defendants after passing of the order of status-quo.

While arguing the case, learned counsel for the petitioners has submitted that the appointment of Local Commissioner is necessary because the construction is quite new. Not only this construction has been raised with mud and bricks and the mud was still fresh and wet. Therefore, this fact could have, very well, been verified by the Local Commissioner.

Having heard the counsel for the petitioners and having perused the file, this Court does not find any substance in the argument raised by counsel for the petitioners. The assertion of the petitioners; in the contempt application moved before the trial Court; is that the construction has been raised after passing of the status-quo order. However, the trial Court has rightly recorded that this is a question of fact; which the petitioners can otherwise substantiate by producing appropriate evidence/ material before the Court and that appointment of Local Commissioner is not necessary for that purpose. Otherwise also, the age of construction cannot be determined by the Local Commissioner by any means. He can only report the existing facts qua any construction on the spot and cannot opine on the probability of the time when the same might have been constructed. The appearance of the alleged construction, particularly, when the same is alleged to be of bricks and mud, can become deceptive for any reasons; natural; as well as; created artificially. This Court is also of the view that the appointment of

the Local Commissioner, for the purpose; for which it was sought to be appointed; is not necessary at all.

In view of the above, finding no merit in the present petition, the same is dismissed.

March 04, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No