

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-592-2021

Date of Decision: 12.03.2021

Lakhwinder Singh

...Petitioner

Versus

Gurudwara Shri Ber Sahib and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vikas Singh, Advocate,
For the petitioner.

(Presence marked through video conference).

ARUN MONGA, J.(ORAL)

Petition herein is under Article 227 of Constitution of India seeking quashing of order dated 18.12.2020 (Annexure P-8) vide which Local Commissioner has been appointed by the Additional Civil Judge, Senior Division, Sultanpur Lodhi for submitting the demarcation report.

2. Learned counsel for the petitioner submits that petitioner along with Surjit Singh and his wife Ranjit Kaur filed a suit for permanent injunction restraining the Defendant-Gurdwara from interfering in the peaceful possession of the petitioner/plaintiff over the land which is spot marked 'C'. During pendency of the suit, respondent/defendant moved an application on 16.01.2013 for appointment of Local Commissioner to inspect the spot and submit a report and the said application was dismissed by the trial Court vide order dated 20.12.2018. Thereafter, petitioner was leading his evidence and the respondent/defendant again moved an application for appointment of local commissioner seeking demarcation of

the land and the same was allowed by the trial Court vide impugned order dated 18.12.2020 (Annexure P-8).

3. Learned counsel for the petitioner contends that once the first application for appointment of Local Commissioner was dismissed by the trial Court vide order dated 20.12.2018 (Annexure P-5), which was never challenged, no fresh application for the same relief could be filed by the respondent/defendant. He further contends that it was specifically brought to the notice of the trial Court that earlier application had already been dismissed yet the fresh application for appointment of Local Commissioner has been allowed by the trial Court. Thus, the impugned order suffers from error of law and is liable to be set aside.

4. I have heard learned counsel for the petitioner and gone through the case file.

5. Order dated 18.12.2020 passed by the trial Court, impugned herein, does not call for any interference in the background of the facts and circumstances as enumerated in the preceding paragraphs of the instant order.

6. Order 29 Rule 9 CPC vests the Court with discretion to get investigation report for the proper elucidation of matter in dispute which would naturally include appointment of a local commissioner, if so deemed fit. For ready reference, Order 26 Rule 9 CPC is reproduced hereinbelow:-

“Commissions to make local investigations- 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 thereon to the Court.”

7. The aforesaid provision under no circumstance can be interpreted to mean that in the event a request for appointment of local commissioner at an earlier stage was declined by the trial Court, it would act in the nature of *res judicata* or an *estoppel* in the perpetuity for the trial Court to change its mind at a later stage.

8. As regards the need to appoint a local commissioner, the impugned order passed by the trial Court is self-explanatory and the reasons assigned therein qua the same cannot be faulted with.

9. In the parting, I may hasten to add here that local commissioner appointed vide the impugned order has already submitted its report and whatever may be the import of the same, it is for the trial Court to determine. *Suffice*, for the purpose of this petition to observe that it is too belated stage to challenge the order once local commissioner report has already come on record.

10. Dismissed.

March 12, 2021

Vandana/ Jiten

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No