

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

CR-7801-2018

Decided on:-21.11.2022

Mohd. Ismail @ Ismaila (deceased thr. Lrs.)

....Petitioner

vs.

Anil Kumar Goyal (Modi)

....Respondent.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Shehbaz Thind, Advocate for the petitioner.

Mr. Himanshu Puri, Advocate for
Mr. Sunny K. Singla, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

By way of present revision petition, challenge has been made to an order dated 20.10.2018 passed by learned Civil Judge (Junior Division), Malerkotla, whereby, an application, filed at the instance of respondent-defendant, seeking appointment of Local Commissioner, has been allowed.

2. Facts leading to the present case are that a suit for permanent injunction was filed, at the instance of petitioners-plaintiffs while praying for restraining the respondent-defendant from dispossessing or causing any interference in their possession over the suit property. It was pleaded in the plaint that the predecessor of the petitioners/plaintiffs, namely, one Mohd. Ismail @ Ismaila, happened to be a lessee/tenant over the suit property and after his death, the petitioner(s) being his legal representatives became tenant. It was also pleaded that few shops were also constructed by the petitioners-plaintiffs over some portion of the suit property. Alleging forcible threat of dispossession at the hands of respondent-defendant, the petitioners-plaintiffs filed a suit for permanent injunction.

3. Upon notice, the respondent-defendant appeared and moved an application seeking appointment of Local Commissioner, so as to visit the spot and to find out the existing position thereof. It was also stated in the application that there were no shops existing over the land in dispute, rather, a renowned Dharamshala Dera Baba Narsingh Dass Ji Complex along with vast open parking stand was existing thereon along with number of shops.

4. The prayer made by the respondent-defendant was opposed by petitioners-plaintiffs by filing a reply dated 24.04.2018. The trial court vide its order dated 20.10.2018, allowed the application filed at the instance of respondent-defendant, directing the appointment of Local Commissioner.

5. Impugning the aforesaid order by way of present revision petition, learned counsel for the petitioners has contended that the application filed at the instance of respondent-defendant was premature as the prayer was made even before the filing of written statement. He further submits that in fact, the respondent-defendant was trying to create evidence in his support through appointment of Local Commissioner.

6. On the other hand, learned counsel for the respondent submits that as part of the dispute also relates to the factum of existing position at the spot, as such, the appointment of Local Commissioner was necessary for the complete and effective adjudication of the case in hand and, as such, the discretion has been rightly exercised in favour of the respondent.

7. I have heard learned counsel for the parties and gone through the paper book.

8. From the records of this case, it can be found that a part of controversy/dispute relates to the factum of existing position of the property in dispute. Accordingly, considering the facts and circumstances of the

present case and also for the purpose of effective adjudication of dispute between the parties, it was necessary so as to find out the existing position at the spot. In this circumstances, the appointment of Local Commissioner would in fact even enable the court to properly and correctly understand the issue and also to decide the rights of the parties in an effective manner.

9. Still further, a perusal of impugned order shows that the appointment of Local Commissioner has not been ordered for the purpose of finding out the factum of possession over the suit property, however, it has been done for the purpose of elucidating the matter in dispute, so as to find out existing position at the spot as regards construction etc., resultantly, the same cannot be said to be done for the purposes of collecting evidence. More so, the respondent-defendant has already filed his written statement before the trial court primarily reiterating the stand taken in his application. Even otherwise, to my mind, appointment of Local Commissioner under Order 26 Rule 9 of the CPC can be made at any stage of trial and non-filing of written statement can't act as a bar to same. Otherwise also, once a discretion has been exercised by the learned trial court for the purpose of carrying out substantial justice, I do not deem it appropriate to interfere with the same in the revisional jurisdiction under Article 227 of the Constitution of India, as the veracity of the report can always be challenged by filing objections or cross-examining the Local Commissioner during trial. Accordingly, finding no merit in the present petition, the same is dismissed.

10. All pending applications, if any, also stand disposed of.

21.11.2022

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/ No