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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1423-2022

Date of decision : 19.07.2022

Baba Nand Gram Udyog Samiti,
through its Secretary Teja Singh

...Petitioner

Vs.

Surjit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. D.S.Malwai, Advocate
for the petitioner.

MANOJ BAJAJ, J.

Petitioner (plaintiff) has filed this revision petition to challenge the order dated 02.03.2022 (Annexure P-5) passed by Civil Judge (Junior Division), Jagraon, whereby his application for appointment of Local Commissioner filed under Order XXVI Rule 9 Code of Civil Procedure, 1908, was dismissed.

Learned counsel has argued that the petitioner is carrying on a business of brick kiln at the suit property and as his possession is being threatened by defendants, he brought a civil suit bearing No.406-2021 for declaration claiming agreement dated 15.01.2001 and affidavit dated 19.03.2020, executed by defendant No.6 in his favour as valid and genuine and further sought declaration that receipt dated 02.01.2018 issued by defendant No.6 in favour of defendant Nos.1 and 2 is illegal, null and void. Petitioner has also prayed for decree of mandatory injunction directing the defendant Nos.3 to 5 to execute the lease deed of the suit property in his

favour and a decree of permanent injunction restraining the defendants from interfering in his peaceful possession of the suit property.

Along with the suit, plaintiff filed an application under Order XXVI Rule 9 CPC for appointment of Local Commissioner to locally inspect the suit property to ascertain the existence of brick kiln at the spot. The defendants while filing the written statement contested the suit as well as the application pleading that no such brick kiln exists at the spot and the Civil Judge (Junior Division), Jagron vide order dated 02.03.2022 proceeded to dismiss the application.

Learned counsel has argued that the petitioner is carrying on the activity of manufacturing bricks by running a brick kiln at the suit property, but the said claim is flatly denied by the defendants, therefore, in these circumstances, the appointment of Local Commissioner is necessary to ascertain the exact situation existing at the spot. He submits that the Civil Judge (Junior Division), Jagron has failed to exercise the jurisdiction vested in it, therefore, the impugned order warrants interference.

After hearing learned counsel and considering the above background, this Court finds that the plaintiff is required to *prima facie* establish his possession over the suit property by relying upon convincing material and considering the nature of the business activity being carried out by the plaintiff, he could easily place on record the license issued by the competent authority authorizing him to run the brick kiln.

During the course of hearing, learned counsel for the petitioner has feigned ignorance about existence of any such document, and further submitted that in case Local Commissioner is appointed, no prejudice would

be caused to the other side.

Upon considering the submissions of Mr.Malwai, learned counsel, this Court is of the opinion that the scope of Order XXVI Rule 9 Code of Civil Procedure, 1908 is limited and this discretionary power cannot be invoked as a matter of right by any of the parties to the suit, because it is for the Court to examine the background of the case, and if, the court is satisfied that the inspection is required, it may appoint the Local Commissioner, but under no circumstances, the appointment of Local Commissioner would be justified, if it amounts to collecting evidence for one of the parties.

Besides, an order passed by the Civil Court under Order XXVI Rule 9 CPC does not decide the rights of the parties, therefore, such an order would not be revisable.

Resultantly, revision petition is dismissed as not maintainable.

(MANOJ BAJAJ)
JUDGE

19.07.2022
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No