

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

138

CR-1666-2022

Date of decision: 02.05.2022

Sucha Singh

.....Petitioner

Versus

Baldev Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 02.04.2022 (Annexure P-5) passed in CS-337-2019 by learned Civil Judge (Jr. Divn.), Phagwara vide which an application moved by the petitioner-plaintiff (Annexure P-3) for appointment of a local commissioner was dismissed.

Learned counsel for the petitioner inter alia contends that the application for the appointment of a local commissioner was erroneously dismissed by the Court below without appreciating that the dispute revolved around the exact location of the two shops in dispute. While the petitioner asserted that the disputed shops were situated in khasra No.3415 MIN/01-10, 3415 MIN/01-13 and 3416/02-18 as entered in the jamabandi for the year 2008-09 situated in village Pagwara Sharki, the respondents on the other hand asserted that the location of shops in dispute were in khasra No.3415 MIN/01-10, 3415 MIN/01-13 and 3416/02-18 and that they were not on the ancestral land as claimed by the petitioner-plaintiff. Learned counsel submits that in

the circumstances, to ascertain the exact location of the disputed shops, the trial Court ought to have appointed a local commissioner for demarcation of the khasra numbers, more so, since the respondents-defendants were not allowing the petitioner-plaintiff to come anywhere near the disputed shops. It was submitted that on account of the aggressive behaviour of respondents-defendants it was impossible for the petitioner to collect evidence in support of his averments. In support, learned counsel has placed reliance upon ***Pratibha Singh and another Vs. Shanti Devi Prasad and another : 2003(1) RCR (Civil) 316.***

I have heard learned counsel and perused the material on record.

The petitioner has filed a suit for rendition of accounts of rent collected by respondent No.1 from respondent No.2 qua the disputed shops. It has been asserted by the petitioner that the disputed shops are located in khasra Nos.3415 and 3416.

It would be relevant to observe here that the burden of proof rests on the party which asserts the existence of some fact. Therefore, it is the respective parties who would have to discharge the burden by leading cogent evidence in support of their assertion and pleaded case.

Adverting to the case in hand, admittedly the plaintiff's evidence is underway, therefore, the plaintiff is free to lead any evidence in support of his assertions qua the location of the shops in dispute. The petitioner cannot be allowed to collect evidence through the Court by levelling allegations of aggressive behaviour of the

respondents. Furthermore, there is nothing which prevents the petitioner from approaching the revenue authorities concerned for demarcation of the shops in dispute. The reliance placed upon by the learned counsel on Pratibha Singh's case (supra) would not come to the rescue of the petitioner as the judgment in the said case was passed by the Hon'ble Supreme Court in exercise of power under Article 142 of the Constitution of India to enable the executing Court to enforce the decree of the trial Court.

This Court is, therefore, not inclined to exercise its revisional jurisdiction to set aside the impugned order dated 02.04.2022.

Dismissed.

02.05.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No