

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

133

CR-1841-2022

Date of decision: 11.05.2022

Gaffar @ Abdul Gaffar

.....Petitioner

Versus

Tahir Hussan

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Tushar Gautam, 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 11.02.2022 (Annexure P-5) passed by learned Additional Civil Judge (Sr. Divn.), Nuh, vide which an application moved by the petitioner/defendant for appointment of a local commissioner was dismissed.

Learned counsel for the petitioner/defendant submits that the respondent/plaintiff has filed a suit for permanent injunction claiming therein that he was owner in possession of the suit land since its purchase vide sale deed dated 01.01.2013. Furthermore, it has been pleaded in the aforementioned suit that the respondent/plaintiff had been using the suit property for residential and other collateral purposes like collecting fodder, dung storage etc. Learned counsel *inter alia* contends that in fact it is not the respondent/plaintiff but the petitioner/defendant who has been owner in possession of the suit property where he had also constructed his residential house, after having purchased it from Lal Singh son of Than Ram and Harbans Lal

vide order dated 22.08.1963. It is in the above background, learned counsel contends that appointment of a local commissioner was essential so that a correct report could come qua the factual position as to which out of the two parties, i.e. the respondent/plaintiff and the petitioner/defendant were in possession of the suit property. Learned counsel submits that in case a local commissioner is appointed, it would just help in the adjudication of the dispute between the parties and would in no way prejudice the case of either of the parties.

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

It transpires from a perusal of the impugned order that a civil suit bearing No.595 of 2012 titled as 'Gaggar Vs. Ayyub and others' was decided by the Court of Additional Civil Judge (Sr. Divn.), Nuh vide judgment dated 21.07.2015. In the aforementioned civil suit the petitioner/defendant herein was the plaintiff and he had contended that he was owner in possession of the suit property by way of an oral sale. Still further, it had been submitted that he had been residing in the suit property after constructing a residential house. As the petitioner/defendant herein failed to prove his case, the aforementioned suit came to be dismissed. The Court of learned Additional District Judge, Mewat dismissed the appeal preferred by the petitioner/defendant against the judgment of the civil Court. Not only this, a Regular Second Appeal preferred against the concurrent findings recorded by the Courts below were dismissed vide judgment and order dated 05.09.2018 of this Court. Hence, it is very evident that the case of the petitioner/defendant herein qua his ownership and possession over

the suit land was discarded by all the three Courts including this Court. The petitioner/defendant is again asserting his ownership qua the suit property and is seeking the appointment of a local commissioner for a report regarding the existing state of affairs. It is not disputed that the residential house of the petitioner/defendant does exist over the suit property. The dispute in the suit in question pertains to only the possession over the suit property, and which of the two parties is in possession would be a matter to be appreciated only after evidence has been led by the parties. The trial Court has rightly observed that a local commissioner cannot be appointed to give his report qua the possession of a party over any property as it would amount to collection of evidence on behalf of the parties.

Dismissed.

However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

11.05.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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