

**112 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH  
CR-1958-2022 (O&M)  
Date of decision : 20.07.2022**

**Sukhchain Singh**

**...Petitioner**

**Vs.**

**Atma Singh and others**

**...Respondents**

**CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. Amit Arora, Advocate for the petitioner.

**\*\*\***

**MANOJ BAJAJ, J.**

**CM-6076-CII-2022**

Application is allowed as prayed for.

**Main case**

Petitioner (plaintiff) has filed this revision petition to challenge the order dated 26.04.2022 (Annexure P-5) passed by Civil Judge (Junior Division), Tarn Taran, 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 dispute between the parties relates to a common passage which is 10 feet in width and 22 karam in length, and is being used by the plaintiff, but the defendant No.1, whose land is situated on the other side of the passage connected with a separate passage, for access to his fields, in connivance with defendant Nos.2 to 4 is trying to obstruct this passage. He further argued that the plaintiff filed an application under Order XXVI Rule 9 CPC for appointment of Local Commissioner to inspect the suit property to ascertain the existence of passage in question because the defendants while filing the written statement contested the application and denied existence of passage at the spot, and the Civil Judge

(Junior Division), Tarn Tarn vide order dated 26.04.2022 proceeded to dismiss the application.

Learned counsel has argued that the appointment of Local Commissioner is necessary to ascertain the exact situation existing at the spot. He submits that the Civil Judge (Junior Division), Tarn Taran has failed to exercise the jurisdiction vested in it, therefore, the impugned order warrants interference. He further submitted that in case Local Commissioner is appointed, no prejudice would be caused to the other side.

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 producing relevant material. 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 material on record 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.

20.07.2022  
vanita

(MANOJ BAJAJ)  
JUDGE

|                             |     |    |
|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |