

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

CR No.2884 of 2022 (O&M)

Date of decision: 26th July, 2022

Harish Kumar Kochar

... Petitioner

Versus

Jatinder Kumar & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. A.P. Kaushal, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is impugning the order dated 20.05.2022 (Annexure P8) vide which the Court below allowed an application filed under Order 26 Rule 9 CPC read with Section 151 CPC and appointed a Local Commissioner with direction to visit the disputed spot and submit his report about the width of the road/street abutting the suit property and its adjoining property leading from Kailash Nagar Road to Kakowal.

Learned counsel, inter-alia contends that the trial Court while passing the impugned order, failed to appreciate that the application under Order 26 Rule 9 CPC for appointment of a Local Commissioner had been moved by the respondent with an ulterior and oblique motive to create evidence in his favour. He submits that the respondent was wanting to fill in a lacuna in their written statement by getting a Local Commissioner appointed, as they had failed to deny the site plan annexed

with the sale deed. He vehemently argued that the report of the Local Commissioner would amount to collection of evidence on behalf of the respondents which could not be permitted to be done, as it was patently illegal and contrary to the settled law. In support, learned counsel has placed reliance upon ratio of law laid down by this Court in '**Subhash Chand vs. Managing Committee, Arya College, Panipat**' (CR No.163 of 2014 d/o 14.01.2014); '**Hari Singh vs. Baljeet Singh & others**' (CR No.4815 of 2016 d/o 23.02.2017); '**Dharamshala through its Managing Committee vs. Piara Singh & others**' (CR No.6633 of 2018 d/o 01.10.2018); and another judgment passed by Hon'ble Madras High Court in '**R. Justin Arulappa vs. R.Xavier Arulappa & another**' CRP (PD) No.839 of 2009.

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

Petitioner/plaintiff has filed the suit in question for permanent injunction to restrain the respondents from encroaching upon 40 feet wide road (from its front side) abutting the western side of the plot of the plaintiff. The respondent/defendant in his written statement, has disputed the width of the road on the western portion of the plot of the petitioner/plaintiff to be 40 feet wide and has further alleged that the boundaries of the plot of the petitioner/plaintiff had been incorrectly mentioned. Before proceeding further, it would be apposite to reproduce Order 26 Rule 9 CPC, which reads as under:-

“9. Commissions to make local investigations

In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court:

PROVIDED that, where the State Government has made rules as to the persons to whom such commission shall be issued, the court shall be bound by such rules.”

A perusal of the above provisions leaves no manner of doubt that a Court can appoint a Local Commissioner for the purpose of elucidating any matter in dispute.

In the instant case, the dispute in essence is qua the width of the road abutting the western portion of the plot of the petitioner. The Local Commissioner has been appointed by the trial Court only for giving his report qua the width of the road/street abutting the suit property and also the adjoining property. The Local Commissioner has nowhere been appointed by the Court to submit its report with respect to the possession or even any alleged encroachment. Thus in the circumstances, it cannot be said that appointment of the Local Commissioner by the learned trial Court would in any manner amount to creating or collecting any evidence. This Court thus, does not find the trial Court in error and rather it was perfectly justified in exercising its

discretion to appoint a Local Commissioner as it would in the facts and circumstances help in the proper and effective adjudication of the matter in issue.

The judgments relied upon by the learned counsel would not come to his rescue as the Local Commissioner in the instant case, as already observed earlier, has not been appointed to submit his report qua the possession of the parties. A perusal of the judgments relied upon reveals that it is also not disputed therein that a Court can appoint a Local Commissioner if the facts and circumstances so warrant. In view thereof, there being no merit in the instant petition, the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 26, 2022
rps

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