

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136

CR-1896-2021

Date of decision: 14.11.2022

OM PARKASH AND ANR

..Petitioners

Versus

DAYA RAM AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amitabh Tewari, Advocate
Ms. Mahima Gupta, Advocate
Mr. Satvik Bansal, Advocate
for the petitioners.

Mr. Neeraj Yadav, Advocate
for respondent No.1 to 6.

ANIL KSHETARPAL, J(Oral)

The petitioners herein are the plaintiffs in a pending suit for grant of decree of permanent injunction. The trial Court has dismissed their application filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, for nominating a local commissioner to demarcate the suit property.

Challenging its correctness, the petitioners have filed the present revision petition.

Two different Division Benches, while interpreting the provisions of Order XXVI Rule 9 CPC viz-a-viz maintainability of the revision petition have held that if the application for appointment of local commissioner is dismissed, the same is not amenable to interference in a revision petition.

Reliance in this regard can be placed on **Harvinder Kaur and another vs. Godha Ram and another 1979 PLJ 562** and **Pritam Singh and another vs. Sunder Lal and others, 1990(2) PLR 191.**

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

The learned counsel representing the petitioners contends that once there is a dispute with regard to the demarcation of the suit property, the trial Court erred in shying away from nominating a local commissioner to carry out the demarcation. This Court has considered the submissions. The petitioners can request the competent authority (the concerned Deputy Commissioner, Sub-Divisional Magistrate or Tehsildar) to get the property demarcated and while examining in evidence the concerned official, such report can be produced and proved in the evidence on their own behalf. Moreover, the Court cannot be compelled to collect evidence on behalf of the plaintiffs.

Hence, no ground to interfere is made out.

Dismissed.

However, this order shall not debar the petitioners from getting the property demarcated at their own level and take steps for proving that report.

All the pending miscellaneous applications, if any, are also disposed of.

November 14th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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