

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

**CR-3249-2022
Decided on:-18.08.2022**

Sukhdev Singh and anotherPetitioners..

VS.

Mukand Singh and anotherRespondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jaiteshwar Singh, Advocate,
for the petitioners.

HARKESH MANUJA J. (Oral)

The petitioners have challenged the order dated 03.08.2022, whereby, their application for appointment of Local Commissioner to inspect the suit property and submit report has been dismissed by the trial court.

The petitioners-plaintiffs filed suit for permanent injunction in the year 2018, restraining the respondents-defendants from storing “*ruri*” “*turi*” and “*cow dung cake*” in their property situated towards southern side of the house, alleging therein that the storage was causing loss to the adjoining wall of their house.

The burden to prove the fact that the adjoining wall between the house of the petitioners-plaintiffs and the property of the respondents-defendants was causing loss to the petitioners-plaintiffs on account of storage being made by them, was entirely upon the petitioners-plaintiffs, who led their evidence oblivious of the fact that they required a local

commissioner to support this. However, at the stage of rebuttal evidence, an application for seeking permission for appointment of Local Commissioner was filed by the petitioners-plaintiffs, which has been dismissed by the trial court.

Once, the burden to prove the facts pleaded in the plaint was upon the petitioners-plaintiffs, it was for them to have produced Local Commissioner or any other evidence in support of their claim at the time when they were leading their evidence in affirmative. At the stage of rebuttal, the appointment of Local Commissioner would reopen the entire suit and cause serious prejudice to the respondents-defendants as such, the petitioners-plaintiffs cannot be permitted to lead any evidence in rebuttal qua the issues for which the burden to prove was upon them.

In view of the above, the petition being devoid of any merit is hereby dismissed.

18.08.2022
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(HARKESH MANUJA)
JUDGE

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