

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

CR-2396-2021

Date of decision: 09.03.2022

Poonam and another

.....Petitioners

versus

Om Prakash Yadav and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Bhim Sharma, Advocate
for the petitioners.

Mr. Siddharth Yadav, Advocate
for the caveator/respondent No.4.

FATEH DEEP SINGH, J.

The petitioners before this Court have sought to challenge an order dated 27.08.2021 (Annexure P-5) passed by the Court of the learned Civil Judge (Senior Division), Gurugram, whereby, an application moved by the petitioners for appointment of Local Commissioner stood dismissed.

Heard counsel for the parties and perused the records.

A suit for partition with possession and consequentially

for permanent injunction was filed by the present petitioners then plaintiffs against present respondents then defendants, seeking to claim that the parties being a joint Hindu family were co-sharers of the land described and depicted in the suit and on the basis of the same has sought the relief in question.

During the course of trial of the suit, an application for Order 26 Rule 9 was moved seeking appointment of a Commissioner to report as to the factual scenario at the spot which stood declined.

Appreciating the submissions, it cannot be displaced by any means that the parties are co-owners/co-sharers of the properties in question which is unpartitioned and by moving the application in question is trying to ascertain as to the exact position existing at the spot and the state of affairs as to which party is in possession of the property and to report as to the construction and its extent. The law is well settled reference of which can be taken note of cited by Mr. Siddharth Yadav, Advocate for the respondent in a judgment titled as 'Gurpartap Singh @ Gulpavitar Singh versus Jagmeet Singh' 2015 (58) R.C.R (Civil) 143. The purpose behind such is to ensure that a party should not be allowed to create evidence during the trial with the aid of the Court and

must stand on its own legs to adduce evidence to establish its case independently. The learned lower Court has rightly held it so holding that the applicant cannot be made to create evidence on the orders of the Court.

This Court does not find merit in the present civil revision and the same stands dismissed.

09.03.2022

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No