

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

CR-5821-2022

Date of decision : 09.12.2022

Baldev Singh and others

...Petitioners

Vs.

Kulbir Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Prashant Bansal, Advocate for the petitioners.

MANOJ BAJAJ, J.

Petitioners (defendants) have filed this revision petition to challenge the orders dated 27.10.2022 (Annexure P-7 and P-8) passed by Civil Judge (Junior Division), Rajpura, whereby firstly his application for appointment of Local Commissioner filed under Order XXVI Rule 9 Code of Civil Procedure, 1908, was dismissed and secondly the prayer for appointment of some technical person to demarcate the land was also dismissed.

Learned counsel has argued that the dispute between the parties relates to a shop of defendants, which is situated on the opposite side of the shop of plaintiffs and there is one kacha kotha on the land of defendants, for which passage is required and one cemented pillar has already been installed by PWD. He further submits that for access to their land, the defendants want to make passage from their own land, but the plaintiffs, whose land is situated on the other side of the passage, are trying to obstruct this passage. He has argued that the appointment of Local Commissioner is necessary to ascertain the exact situation existing at the spot, but the Civil Judge (Junior Division), Rajpura 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 defendants are required to produce relevant material in the suit proceedings on their own to establish their case, and further 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.

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.

09.12.2022

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(MANOJ BAJAJ)
JUDGE

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