

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

C.R NO. 723 of 2023

DATE OF DECISION: 23.03.2023

Neelam Singla **...Petitioner**

Versus

Jasvir Singh and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gaurav Aggarwal, Advocate,
For the petitioner.

None for respondent No.1, despite service.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside order dated 14.12.2022 (Annexure P-6) passed by learned Civil Judge (Junior Division), Sardulgarh, whereby application filed by petitioner/ defendant No.3 for appointment of Local Commissioner, was dismissed.

2. Succinct facts first, as pleaded in instant petition.

2.1. Respondent No.1/plaintiff filed a suit for permanent injunction pertaining to land measuring 72 Kanals 6 Marlas restraining the petitioner/defendant No.3 and respondents No.2 and 3 herein from changing the nature of suit land measuring 7 Kanals 8 Marlas and alienating more than their share without getting the same partitioned.

2.2. Upon notice, defendants No.1 and 3 filed separate written statements taking preliminary objections regarding maintainability; locus-standi etc.

2.3. Replication was also filed by respondent No.1/plaintiff to the written statement filed by petitioner/defendant No.3.

2.4. Meanwhile, defendant No.3/petitioner herein moved an application for appointment of Local Commissioner for obtaining report regarding factual position of the suit property. It is stated in the application that suit land was partitioned through family settlement/partition which took place between defendant No.3 and rest of the purchasers. He has built two shops in area measuring 60 feet and remaining 40 feet has been covered with boundary wall (as stated in application Annexure P-5).

2.5. Learned trial Court after hearing rival contentions of parties, dismissed the application filed by petitioner vide order impugned herein.

3. Learned counsel for petitioner/defendant No.3 would canvass that plaintiff while his examination-in-chief has denied construction of two shops and boundary wall over the property in dispute, for determination of actual position of suit property, a Local Commissioner is required to be appointed.

4. I have heard learned counsel for petitioner and have gone through the records.

5. Despite service, no one has caused appearance on behalf of respondent No.1/plaintiff, which is suggestive of the fact that respondent No.1 does not want to contest the revision petition and consents to same being allowed.

6. In the premise, since a limited question is with regard to determination of actual position of suit property, it would be rather appropriate and of assistance to learned trial Court itself if the application is allowed by appointing a Local Commissioner under Order XXVI Rule 9 CPC. For ready reference, Order XXVI Rule 9 CPC is reproduced herein below:-

“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.”

7. Perusal of above rule clearly reflects that for the purpose of elucidating any matter in dispute, the Court may issue a Commission to make an investigation and give a report. There is no gainsaying about settled proposition of law that under the garb of Order XXVI Rule 9 CPC, assistance of the Court should not be sought to collect any favourable evidence as onus of proof of their case lies on respective parties by adducing evidence at appropriate stage. But, in the present case, a report by the Local Commissioner would in fact help in effective adjudication of the issue and would not cause any prejudice to either side.

8. In the parting, I may hasten to add that there is nothing on record to suggest that appointment of a Local Commissioner would result in creation of any evidence in favour of defendant No.3 (petitioner herein).

9. Kanungo incharge of area, as per territorial jurisdiction, is appointed as Local Commissioner, who is at liberty to take assistance of local police, if warranted. The Local Commissioner shall also give prior notice to both the parties about his date and time, measure and demarcate the suit land. The proceedings of measurement shall be videographed and CD/Pen Drive of the same along with report shall be submitted before learned trial Court. Report be filed before learned trial Court as expeditiously as possible.

10. Petitioner shall bear the fee of Local Commissioner and incidental expenses including cost of the aforesaid process. A consolidated amount of Rs.7,500/- (all inclusive) shall be payable to the Local Commissioner in advance. The Ld. trial Court shall accordingly issue appropriate notice to the Local Commissioner on deposit of his fee by the petitioner.

11. In the premise, the instant revision petition is allowed and impugned order dated 14.12.2022 (Annexure P-6) is set-aside.

12. Pending application(s), if any, shall also stand disposed of.

MARCH 23, 2023
Shalini

(ARUN MONGA)
JUDGE

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