

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

**CM-5871-CII-2023 in/and
CR-1994-2023
Date of Decision: 29.03.2023**

Gurvinder Singh @ Aman

...Petitioner

Versus

Smt. Phoolwati and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kul Bhushan Sharma, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

CM-5871-CII-2023

For the reasons stated in application, same is allowed subject to all
just exceptions.

CR-1994-2023

Petition herein is for setting aside order dated 22.03.2023 (Annexure
P-1) passed by Ld. Civil Judge (Junior Division), Gurugram, whereby application
filed by plaintiffs/respondents No.1 & 2, for appointment of Local Commissioner
directing him to ascertain the fact whether the property has been given on rent and
who are tenants in the said property and to enquire and verify who are staying
therein and in what capacity, was allowed.

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

2.1. Plaintiffs/respondents No.1 & 2 filed a suit seeking decree for
mandatory injunction directing defendant No.1/petitioner not to collect the rent and
further not to interfere in the tenancy of the tenant(s) with consequential relief of
permanent injunction restraining the defendant No.1/petitioner from interfering in

the collection of rent from the tenant(s) and from forcibly evicting the tenant(s) from the tenanted premises.

2.2. Dispute is with regard to the properties left behind by deceased Narinder Singh father of the petitioner and proforma respondents No.3 & 4 and respondent No.2 and husband of respondent No.1 who is mother of the petitioner and respondents no.2 to 4.

2.3. In their application seeking appointment of local commissioner, plaintiffs/Respondents allege that the suit property to be in the possession of the tenants whereas petitioner has denied the same by filing an affidavit. Petitioner deposes that there are no tenants and the suit property is in his possession and a few servants, maids and drivers of petitioner.

2.4. Ld. Trial Court allowed the application filed by plaintiffs/respondents No.1 and 2 by appointment of a Local Commissioner and has also given directions as mentioned above vide impugned order. For ready reference, relevant part of the impugned order is extracted herein below:-

“xxxx xxxx xxxx xxxx

5. It is apparent that the affidavit has contains vague statements therein. The defendant no.1 did not disclose the names of the alleged servants/maids/driver who allegedly are living in the suit property. He has not mentioned which part of the suit property they are occupying and which part is lying vacant. In these circumstances, it has become necessary to appoint a Local Commission to ascertain the fact whether the property has been given on rent and who are the tenants in the said property. Mr. Surender Kumar Yadav, Advocate is hereby appointed as Local Commissioner. He is directed to visit the property, to enquire and verify as to who are staying therein and in what capacity they had been staying as such. A detailed report be filed on or before 21.04.2023.

The application stands allowed.

xxxx xxxx xxxx xxxx”

3. Heard.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. A local commissioner appointed by the Court represents the Court. Purpose of his appointment is to assist the Court in coming to a just decision, in this case, it is qua the physical status of the suit property. Impugned order is wholly silent about the quantum of fee of the local commissioner and who will pay the same. Intriguingly, the learned Court has left it to the sole discretion of the local commissioner to fix his fee and it is also left to him as to decide as to who will pay the same. Be that as it may, learned Court below ought not to have passed such a vague order while appointing a local commissioner. If the local commissioner is an advocate practicing in the same court, as in present case, his decision on these questions may render him vulnerable to unnecessary and unsavory criticism affecting his own reputation as also the value and credibility of his report. In my opinion, the learned trial Court ought to have itself fixed the fee of the local commissioner and also specified who would pay the same. That having not been done, the impugned order is liable to be set aside.

6. In the premise, the revision is allowed and the impugned order is set aside with direction to the Ld. Trial Court to pass fresh orders on the application *qua* appointment of Local Commissioner, in accordance with law.

7. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 29, 2023
ashish

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