

CR-2441-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2441-2023 (O&M)

Date of decision: April 26, 2023

Varun Bhutani

....Petitioner

versus

Laxman

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Jagtar Kureel, Advocate for Petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 06.04.2023 (Annexure P-12) passed by learned Additional Civil Judge (Senior Division), Palwal, whereby application filed by petitioner/ defendant for appointment of Local Commissioner, was dismissed.

2. The revision petition is premised on the averments that respondent-plaintiff filed suit for possession by way of specific performance of agreement to sell with further relief of permanent injunction against petitioner-defendant. Trial proceeded. Vide order dated 09.03.2023 (Annexure P-8), learned trial Court closed the evidence of defendant by Court order. Defendant challenged the said order by way of CR-2303-2023, which was allowed vide order dated 19.04.2023 granting him further opportunity to lead evidence.

2.1. Defendant moved an application for appointment of Local Commissioner to submit his report with regard to dimensions of suit property. Vide impugned order dated 06.04.2023 (Annexure P-12), learned trial Court dismissed the said application and also imposed costs of Rs.5,000/- upon defendant.

3. I have heard learned counsel for petitioner and perused the case file.

4. Impugned order dated 06.04.2023 passed by learned Additional Civil Judge (Senior Division), Palwal, is premised, *inter alia*, on the following reasoning:

“6. By way of instant application, learned counsel for defendant has sought appointment of Local Commission. Bare perusal of sale deed Ex. PA shows that the dimensions of the suit property has been mentioned in it as 10 x 20 feet. The defendant has acquired his ownership by way of this sale deed Ex. PA only. The same dimensions which has been mentioned in the sale deed Ex. PA have been mentioned in the agreement to sell Ex. P4. When the defendant has himself acquired the ownership by way of sale deed Ex. PA which mentions the dimensions and measurement of the suit property which has been mentioned in the agreement to sell Ex. P4 then he cannot question the dimensions and identification of the suit property.

7. Moreover, there is no dispute regarding identification and measurement of the suit property rather the present suit has been filed seeking relief of specific performance of agreement to sell Ex. P4. In these circumstances, there is no requirement to appoint Local Commission for demarcation and measurement of the suit property. Moreover, the present application has been filed at belated stage when the case was fixed for rebuttal evidence and for arguments. Bare perusal of the contents of the application itself shows that the application is vague and has only been moved only to linger on the matter. Hence, the instant application is hereby dismissed with Rs. 5000/- cost to be deposited in DLSA by the defendant.”

5. It transpires that information sought to be placed through report of Local Commissioner already forms part of the testimony of witnesses of defendant. Furthermore, evidence of defendant is still going on and nothing would preclude him to adduce other evidence about dimensions of suit property which he is trying to collect by appointment of local commissioner through judicial orders of the Court. Such a course is not permissible.

5.1. That apart, application for appointment of Local Commissioner has been filed after almost 7 years of the filing of suit and there is nothing on record to show as to what transpired during these 7 years which precluded petitioner to move such an application on an earlier occasion.

6. 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:

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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.”

6.1. Perusal of above rule clearly reflects that for the purpose of elucidating any matter in dispute, the Court may direct the Commission to make an investigation and give a report. As already noted, 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. In the present case too, report by Local Commissioner would be of no help to petitioner since dimensions and measurement of suit property have already been mentioned in the agreement to sell Ex. P4 and petitioner/defendant has acquired his ownership only by way of this sale deed Ex. PA.

7. I may hasten to add that there is nothing on record to suggest that appointment of a Local Commissioner would indeed be useful for learned trial Court.

8. Having heard arguments of learned counsel for petitioner, I am of the opinion that the learned trial Court rightly dismissed the petitioner’s application. There is no room for interference in the aforesaid valid reasons recorded by learned Court below.

9. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

10. Dismissed.

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

(ARUN MONGA)
JUDGE

April 26, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No