

CR-2805-2023 (O&M)
Date of decision: 05.05.2023

SHAMSHER SINGH BAJWA

...Revisionist

VS

GURDIAL SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vipin Mahajan, Advocate,
For the revisionist.

ARUN MONGA, J. (ORAL)

CM-8286-CII-2023

Application is allowed, as prayed for, subject to all just exceptions.

Main case

Revision petition herein *inter alia* is to set aside impugned order dated 09.01.2023 (Annexure P-4) passed by learned Rent Controller, Gurdaspur whereby application moved by Revisionist-tenant for appointment of Local Commissioner, was dismissed.

2. Factual narrative first, as pleaded in the instant petition.

2.1. Respondent herein/landlord filed petition (Annexure P-1) under Section 13 of East Punjab Urban Rent Restriction Act, 1949 for ejectment of revisionist from two shops situated in the revenue estate of village Fateh Nangal, now in municipal limits of Dhariwal.

2.2. Upon notice, revisionist appeared and filed written statement (Annexure P-2). It was submitted that demised shops have been constructed

on Khasra No.1048/2 and land beneath the shops belongs to Irrigation Department. Respondent/landlord has no right, title or interest therein. Revisionist denied the factum of relationship of landlord and tenant.

2.3. Revisionist filed an application under Order XXVI Rule 9 read with Section 151 CPC for appointment of Local Commissioner to report about existing state of affairs prevailing at the spot alongwith photographs. Vide impugned order dated 09.01.2023 (Annexure P-4), learned Rent Controller dismissed aforesaid application. Hence, the instant petition.

3. Learned counsel for revisionist/tenant would canvass that appointment of local commissioner in this case will not cause any prejudice to rights of respondent/landlord, rather it will be helpful in determining the core question involved in the suit.

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondent-defendants seems unnecessary and is, therefore, dispensed with.

5. I have heard learned counsel for revisionist and have perused the case file.

6. Ordinarily, this Court refrains to accept the request for appointment of Local Commission under the garb of assistance of the Court to collect evidence/create evidence, which is non-existent. However, since in the present case, dispute is with regard to vacation of the shops in question, to that limited extent physical inspection of the shops in question is relevant and will be of certain use and assistance of learned Rent Controller for deciding the relationship *inter se* tenant and landlord as to whether it exists on the land owned by landlord. To that limited extent, the request of tenant to seek appointment of Local Commissioner ought to have been accepted by

learned Rent Controller. 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. 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. 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. 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 revisionist herein.

9. No prejudice would be caused to opposite party in case prayer of Revisionist for appointment of the Local Commissioner is allowed.

10. In the premise, without commenting on rival contentions of learned counsel as noted hereinabove, impugned order is set aside. Application for appointment of Local Commissioner is allowed. Learned trial Court to appoint a Local Commissioner to carry out physical

verification of the shops in dispute. The Local Commissioner shall give prior notice to both the parties about his date and time of spot visit and make a report of actual position. The proceedings shall be videographed and CD/Pen Drive of the same along with report shall be submitted before learned trial Court.

- 11. Revisionist shall bear the fee of Local Commissioner and incidental expenses including cost of the aforesaid process.
- 12. Petition is allowed in above terms.
- 13. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

05.05.2023
vandana

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