

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

**Civil Revision No. 4250 of 2023(O&M)
Date of Decision: 31.07.2023**

Satnam Singh Bhatia & Ors.

...Petitioners

Versus

Thakur Dwara Kalan

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Arvinder Arora, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners/defendants against the order dated 06.02.2023 (Annexure P-5) passed by the Court of Civil Judge (Jr.Divn.), Naraingarh, District Ambala whereby the application filed by the petitioners under Order 26 Rule 9 read with Section 75 CPC for appointment of Local Commissioner to elucidate the matter in dispute, is dismissed in a civil suit titled Thakur Dwara Vs. Satnam Singh Bhatia & Ors.

2. The counsel for the petitioners submits that respondent has filed suit for grant of mandatory injunction directing the petitioners/ defendants to hand over possession of the suit property after demolishing the unauthorized construction raised by them with consequential relief of permanent injunction. The suit is being contested by the petitioners who have also filed counter claim to the effect that they have become owners of the suit property

on the basis of adverse possession. The counsel for the petitioners further submits that during the pendency of the suit the petitioners filed an application for appointment of Local Commissioner but the same has been dismissed by the learned trial Court with observation that Local Commissioner cannot be appointed to collect evidence on behalf of a party. The counsel for the petitioners further submits that in case the Local Commissioner is appointed and he submits his report then it will be easier for the learned Trial Court to visualize the actual and factual position which is there at the spot. So, prayer is made that present petition be allowed.

3. I have considered the submissions made by counsel for the petitioners.

4. It is apparent that the respondent/ plaintiff has filed suit for mandatory injunction to get vacant possession of the suit property from the petitioners who are stated to be in illegal possession of the same, on the ground that the said property is owned by respondent/ plaintiff. The suit is contested by the petitioners who have admitted their possession over the suit property and further claimed its ownership on the basis of adverse possession. In the given circumstances, there is no dispute between the parties regarding identity, boundaries or dimensions of the suit property. Local Commissioner cannot be appointed for making enquiry about factum of possession. The learned trial Court rightly held that the Local Commissioner cannot be appointed by a party for collection of evidence. Both the parties are at liberty to lead their evidence in support of their claims. So, at present, when the suit is at its initial stage, no ground is made out to appoint Local Commissioner by invoking provisions of Order 26 Rule 9 and Section 75 CPC.

5. Consequently, the present petition is hereby dismissed. However, in future, if the trial Court is of the view that appointment of Local Commissioner is necessary for just decision of the case, it could *suo moto* appoint Local Commissioner to get report regarding actual and factual position at the spot.

(KARAMJIT SINGH)
JUDGE

31.07.2023

Jiten Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No