

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4443-2022 (O&M)

Date of Decision: 04.01.2023

Phoola Devi @ Phula Devi

.....Petitioner

Versus

Banwari Lal

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Prashant Singh Chauhan, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for modifying/setting aside order dated 12.07.2022 (Annexure P-3) whereby the application filed petitioner/plaintiff for appointment of Local Commissioner in Civil Suit No.42 of 2019, has been dismissed.

2. Civil Suit in question is for possession and permanent injunction claiming that the plaintiff (petitioner herein) and other co-sharers are owners in exclusive possession of the land in question. Demarcation report dated 21.10.2018 conducted by Kanungo in support of the claim in suit has also been filed. As per the said report, the respondent/defendant has allegedly encroached upon an area measuring 486.8 square yards of the land in question belonging to the petitioner/plaintiff.

3. In the premise, an application for appointment of Local Commissioner to demarcate the area in question was filed by the petitioner (plaintiff). However, vide impugned order application has been rejected. Hence, the instant petition.

4. Heard.

5. While there is no quibble with the view taken by the trial Court that the burden of proving his possession over Rectangle No.10, Killa No.9/1/2 is upon the defendant (respondent herein) and the plaintiff (petitioner herein) cannot be allowed to create evidence by seeking indulgence of the Court to appoint a Local Commissioner. However, what has to be seen is the nature of controversy involved herein. The suit involves the dispute with respect to the alleged encroachment on the suit land *qua* which the plaintiff (petitioner herein) claims herself to be the owner. The ownership of the plaintiff (petitioner herein) is not in dispute. In the premise, since a limited question is with regard to encroachment on the land of the plaintiff (petitioner herein) for which the demarcation has already been carried out, it would be rather appropriate and of assistance to the trial Court itself if it would have allowed the application 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.”

6. Perusal of the 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 that there is no gainsay about the settled proposition of law that under the garb of Order

26 Rule 9 CPC the assistance of the Court should not be sought to collect any favourable evidence as the onus of the same lies on the respective party to adduce at the appropriate stage. But, in the present case, a report by the Local Commissioner *qua* the demarcation of land would in fact help in effective adjudication of the issue and would not cause any prejudice to either side.

7. In the parting, I may hasten to add that there is nothing on record which *prima facie* establishes or otherwise being of evidentiary value to suggest that appointment of a Local Commissioner would result in creation of any evidence in favour of the plaintiff (petitioner herein).

8. No prejudice would be caused to the opposite party in case the prayer of the petitioner for appointment of the Local Commissioner is allowed. Hence, the requirement of issuance of notice to the respondent is dispensed with.

9. Mr. Sudhir Yadav, Learned Advocate, Gurugram (Lawyer's Chamber No.21, D Block, Near Hall No.2, Gurugram Courts Complex, Rajiv Chowk, Haryana-122 001, Mob. No.9716812300) is appointed as Local Commissioner, who is at liberty to take assistance of the Kanungo as well as local police, if warranted, of the area under whose jurisdiction the land in question is located. The Local Commissioner shall also give prior notice to both the parties about his tentative date of visit and time and then videograph the actual physical status of land in question and to submit a CD/Pen Drive of the same along with the report before the trial Court. Report be filed before the 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.50,000/- (all inclusive) shall be payable to the Local Commissioner in advance.
11. Petition is allowed accordingly.
12. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 04, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No