

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5687-2023 (O&M)
Date of Decision:-09.10.2023

DHARAM SINGH AND OTHERS

... Petitioner(s)

Versus

RADHEY SHYAM AND OTHERS

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Sanjay Verma, Advocate
for the petitioners.

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioners/defendants No.2 to 5 against the order dated 11th September, 2023 (Annexure P-4) passed by the Court of Additional Civil Judge (Senior Division), Palwal, whereby the application filed by the petitioners for appointment of local commissioner under Order 26 Rule 9 CPC to ascertain and report about the existing state of affairs of the suit property has been dismissed.
2. The counsel for the petitioners *inter alia* submits that respondents No.1 to 8 have filed suit for permanent injunction restraining the petitioners from interfering into their peaceful possession over the suit

land bearing rectangle No.311 Killa No.1/2, 2/2 and 3/2. The counsel for the petitioners further submits that the suit is being contested by the petitioners, who are in actual physical possession of the suit land being co-sharers. It is further contended that for proper adjudication of the subject matter in dispute, it is necessary to appoint some revenue official as a local commissioner, who should inspect the spot and submit his report after conducting demarcation in presence of both the parties. The counsel for the petitioners in support of his contentions has referred to provisions of Order 26 Rule 9 CPC and the order dated 23.3.2023 passed by the Co-ordinate Bench of this Court in **CR-723-2023 Neelam Singla vs. Jasvir Singh and Ors..**

3. I have considered the submissions made by counsel for the petitioners.
4. The suit property has been specifically described by the respondents No.1 to 8 in their plaint and there is no dispute without regard to identity of the suit property. The only dispute between the parties is with regard to possession over the suit property as both the parties are claiming their exclusive possession over it. The local commissioner cannot be appointed for collection of evidence or to ascertain as to which of the two parties is in actual physical possession of the disputed site. The facts and circumstances of the case law referred by the counsel for the petitioners are entirely different as in the said case local commissioner was appointed to ascertain the nature of the suit property as plaintiff therein filed a suit for permanent injunction to restrain the other party from changing the nature of the suit property. However, in the present case local commissioner cannot be appointed

just to get report as to whether the suit land is lying vacant or some construction is already raised therein in the shape of liquor shop and that tubewell is also installed at the spot.

5. For the forgoing reasons without commenting on the merits of the case, this Court is of the view that there is no illegality or infirmity in the impugned order. Consequently the present revision petition is hereby dismissed.

09.10.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No