

122.

2023:PHHC:148301

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

CR-7006-2023

Date of decision: 21.11.2023

Davinder Jeet Singh

.... Petitioner

Versus

Preeti Devi and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr.Supinder Singh Sohi, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 18.09.2023 (Annexure P-1) passed by learned Civil Judge (Senior Division), Patiala, whereby the application filed by the petitioner-defendant No.1 for appointment of Local Commissioner has been dismissed.

2. The brief facts, as culled out from the petition, are that respondent No.1-plaintiff filed a suit for mandatory injunction directing the petitioner-defendant No.1 to close the iron gate on ground floor and the balcony constructed illegally on the first floor from the backside of house of defendant No.1 and without any sanction of defendant/respondent No.2-Municipal Corporation, and also suit for permanent injunction restraining defendant No.1 from interfering in the peaceful enjoyment of close street in front of the house of plaintiff-respondent No.1.

3. Learned counsel for the petitioner has argued that in the year 2017, the petitioner-defendant No.1 had constructed a gate on the backside of his house i.e. towards Street No.7, as per site plan sanctioned by respondent No.2-Municipal Corporation. The house of respondent No.1-plaintiff is also located on Street No.7. Since the suit filed by the plaintiff is frivolous one, so the petitioner-defendant No.1 moved an application under Order 26 Rule 9 CPC for appointment of a Local Commissioner, but the said application was dismissed vide order dated 18.09.2023. The Local Commissioner is required to get assessment of actual and factual situation of Street No.7. The purpose of filing the said application was that the application for temporary injunction moved by the respondent-plaintiff could be rightly decided by the learned trial Court after taking into consideration of actual and factual condition at the spot. Without getting report, said application was decided and the petitioner was restrained from peaceful enjoyment by the plaintiff-respondent No.1 regarding the street. The appointment of a Local Commissioner by Court to make local investigation does not amount to collecting the evidence. Reliance is placed on the judgments in ***Haryana Waqf Board Versus Shanti Sarup, (2008) 8 SCC 671; M/s. Royal Industries Versus M/s National Steel Rolling Mills and others, 2023 (4) Civil Court Cases, 132 (P&H); Kashinath Chindhuji Shastri Versus Haribhau Nathuji Bawanthade, 2004(2) MhLJ 722; Jitender alias Leela Versus Rashma, 2022(1) Law Herald 178.***

4. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

5. Petitioner-defendant No.1 moved an application dated 03.05.2023 (Annexure P-6) under Order 26 Rule 9 read with Section 151 CPC for appointment of a Local Commissioner to visit the site in dispute and report about the actual and factual position on the spot. It has been pleaded that as per sanctioned site plan of Municipal Corporation, Patiala, the petitioner has two gates to his house, i.e. one from street No.5 and the other from street No.7, but the plaintiff-respondent No.1 want to grab the entire street by getting relief as mentioned in the plaint.

6. Order 26 Rule 9 CPC reads as under:-

“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. A perusal of quote shows that Local Commissioner can be appointed to make local investigation for the purpose of elucidating any matter in dispute. In the case in hand, the house of the plaintiff is situated in street No.7. Defendant No.1 is having house in street No.5 and the backside of his house is towards street No.7 and he has opened a gate and constructed balcony on the first floor towards street No.7. These facts are not disputed at all. The questions whether petitioner-defendant No.1 has got right to open

gate towards street No.7 or he has opened the gate and constructed balcony on the first floor of his house towards street No.7, as per sanctioned site plan of respondent No.2-Municipal Corporation, Patiala, are to be determined during the trial of the case and the same can only be proved during trial. A Local Commissioner cannot be sent to inspect the spot to ascertain a fact which is not disputed. The Local Commissioner cannot help the petitioner in any manner.

8. In view of above, the learned court below has rightly dismissed the application of the petitioner-defendant No.1 for appointment of a Local Commissioner and I do not differ with the same. The revision petition is, accordingly, dismissed.

(GURBIR SINGH)
JUDGE

November 21, 2023

sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No