

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

**Civil Revision No. 7256 of 2023(O&M)
Date of Decision: 04.12.2023**

Bimla Devi

...Petitioner

Versus

Pawan Kumar & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Lajpat Rai Sharma, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

1. The present civil revision petition has been filed by the petitioner/ plaintiff against the order dated 12.10.2023 whereby the application filed by the petitioner for appointment of Local Commissioner with direction to visit suit property and to prepare a site plan showing the construction raised therein and existing position of all the *khasra* numbers including passage, carving of plots etc. , has been dismissed by the Court of Civil Judge (Jr.Divn.), Panipat.

2. The brief facts of the case are that the petitioner being co-sharer in the suit land has filed suit for permanent injunction restraining the respondents from alienating any specific *khasra* number/ portion out of the joint land measuring 22 *kanals* 03 *marlas* and further restraining the respondents/ defendants from digging and removing soil from any portion of the suit land and further restraining them from changing its nature by raising construction therein. During the pendency of the suit, the petitioner has filed the aforesaid application seeking appointment of Local Commissioner to submit his report after inspecting the suit property. The said application was contested by the

respondents and the learned trial Court dismissed the same vide impugned order dated 12.10.2023. Being aggrieved, the petitioner has filed the present revision petition.

3. The counsel for the petitioner while assailing the impugned order, contends that in case the present application is allowed, it is not going to cause any prejudice to the respondents and rather the report of Local Commissioner coupled with site plan would help in proper adjudication of the civil suit filed by the petitioner. It is further contended that no doubt the suit property is still joint, but respondents intend to take possession of specific portion out of the same by raising construction therein and by selling different plots with specific boundaries, which will prejudice the rights of the petitioner. The counsel for the petitioner made prayer that the impugned order being illegal deserves to be set aside. In support of his contentions, the counsel for the petitioner has placed reliance upon **Anwar Batcha & Anr. Vs. S. Mahuedoom**, 2014(42) RCR(Civil) 798 (Madras) and **Payani Achuthan Vs. Chamballikundu Harijan Fisheries Development Coop. Society & Ors.**, 1996 AIR (Kerala) 276.

4. I have considered the submissions made by counsel for the petitioner.

5. In the plaint, it has been specifically pleaded by the petitioner that both the parties are co-sharer in the suit land measuring 22 *kanals* 03 *marlas*. However, this fact has been denied by the respondents in their written statement. Admittedly, there is no dispute between the parties with regard to identity, location and dimensions of the suit property as such the case laws cited by the counsel for petitioner are of no help to the petitioner. In case the suit property is found to be joint of the parties, then the parties are at liberty to use the same and raise construction to the extent of their shares, as has been

held by the Division Bench of this Court in **Bachan Singh Vs. Swarn Singh**,
2000(3) RCR(Civil 70.

6. Further, alienation of specific portion out of joint land is considered as sale of share out of the joint property. Furthermore, Local Commissioner cannot be appointed for making enquiry about factum of possession and cannot be appointed at the instance of 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 CPC.

7. Consequently, the present petition is hereby dismissed being devoid of merits, without expressing any opinion on the merits of the case. 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

04.12.2023

Jiten

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