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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of Decision: 05.02.2024.

Dharmender Singh Yadav

...Petitioner.

Versus

Dr. Narender Singh Yadav and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Arvind Kumar Yadav, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 15.11.2023 (Annexure P-5) passed by learned trial Court, vide which application filed by the petitioner/ plaintiff for appointment of Local Commissioner, has been rejected.

2. The brief facts relevant for the adjudication of the present revision petition are that the petitioner/ plaintiff had filed a suit for declaration with consequential relief of permanent injunction against the respondents/ defendants claiming declaration to the effect that the passage/ rasta 22 feet in the suit property is common for use of all the residents and the defendants have no right to interfere or block the said passage/ rasta by any means and also for permanent injunction to the effect that the defendants/ respondents are restrained from interfering in the passage/ rasta used by the plaintiff/ petitioner by blocking the same or from reducing the

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width of the said passage/ rasta. After issuing of notice to the respondents/ defendants by the trial Court, they appeared and filed the written statement with the averments that they are in exclusive possession of immovable property in dispute and denied that the plaintiff is having 1/4th share in the suit property. Vide order dated 13.09.2021 passed by the trial Court, an interim injunction was granted vide which a direction was given to both the parties not to interfere ingress and outgress of each other qua common passage/ rasta as used by them since long. Thereafter, an application under Order 39 Rule 2A CPC was filed by the petitioner/plaintiff before the trial Court alleging that the respondents/ defendnats had deliberately violated the injunction order passed by the trial Court by demolishing the existing guard room etc. and also installed the new gate and shifted the rasta of the plaintiff/ petitioner to another location within property of HUDA Department. The defendants also installed new pucca iron gate in Rect No.23, Kila No.19/1 which is in the property of HUDA Department.

3. The petitioner/ plaintiff moved an application before the trial Court for appointment of a Local Commissioner i.e. Kanoongo or Naib Tehsildar of the revenue department to ascertain the existing state of affairs of the suit property and to ascertain the facts whether the defendants have shifted the rasta/ passage alongwith gate and blocked the common rasta and had installed a new gate in the HUDA property and also to demarcate the land in question i.e. Rect No.23, Kila No.19/1 as detailed in para No.1 of the plaint, so as to ascertain the existing state of affairs. In the reply filed by them the respondents/ defendants denied the allegations and alleged that there is no necessity of appointment of Local Commissioner for the said

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purpose. The learned Trial Court, vide order dated 15.11.2023 dismissed the said application. Hence the petitioner knocked the doors of this Court by way of filing the present revision petition.

4. Learned counsel for the petitioner has contended that the trial Court while passing the impugned order has not considered the facts that the respondents/ defendants despite having specific knowledge regarding passing of the injunction order dated 13.09.2021, intentionally committed violation of the said order and demolished the passage/ rasta used by the plaintiff/ petitioner and also caused hindrance by installing the iron gate. As the other party was denying the said allegations so in order to ascertain the true facts the Local Commissioner was required to be appointed. The trial Court has also erred in observing that by way of the said application, the petitioner/ plaintiff wanted to appoint the Local Commissioner to create evidence. He has also submitted that the appointment of the Local Commissioner would not hamper or would not cause any loss to the respondents/ defendants in any manner. The trial Court has also not properly considered the photographs of the disputed passage which clearly show that the respondents/ defendants had made encroachment by demolishing the old construction i.e. guard room and main gate. He has contended that the appointment of the Local Commissioner would help in effective adjudication of the dispute between the parties and would not result in creating of any evidence in favour of the plaintiff. He has placed reliance upon the judgment of this Court in CR-7801-2018 **Mohd. Ismail @ Ismaila**

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(deceased through LRs) Vs. Anil Kumar Goyal (Modi), decided on 21.11.2022 and CMPMO No.525 of 2017 Shri Ram Rattan Vs. Smt. Kamli Devi and others, decided on 05.07.2019 in this regard.

5. I have heard learned counsel for the petitioner and have gone through the relevant record.

6. In the instant case, the plaintiff has sought permanent injunction for restraining the defendants from interfering in the passage/rasta used by the plaintiff/ petitioner by blocking the same or from reducing the width of the said passage/ rasta. The plaintiff has to prove his own case by adducing the relevant evidence. It is well settled proposition of law that under the garb of Order 26 Rule 9 CPC, assistance of the Court should not be sought to collect any favourable evidence, as onus of proof of their case lies on respective parties by adducing evidence at the appropriate stage. In the instant case, appointment of Local Commissioner would result in creating of the evidence in favour of the plaintiff, which would cause prejudice to the other side.

7. The case law cited by learned counsel for the petitioner is not applicable to facts of the case in hand. In Shri Ram Rattan's case (supra), when there was a boundary dispute between the parties so the Local Commissioner was appointed to demarcate the land. In Mohd. Ismail @ Ismaila's case (supra), it was held that the Local Commissioner can be made at any stage of trial and non-filing of the written statement cannot act as bar to same. Thus the case law cited by learned counsel for the petitioner is of no help to him.

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8. Thus, there being no illegality or infirmity in the impugned order and no interference there with is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

9. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

05.02.2024.
komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No