



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

123

CR-2707-2024 (O&M)

Date of decision: 29.07.2024

Prem Singh

...Petitioner

Versus

Phool Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Arkash Mani Garg, Advocate for the petitioner.

VIKAS SURI, J.(Oral)

1. In this petition filed under Article 227 of the Constitution of India, the petitioner-plaintiff assails the order dated 04.03.2024 passed by learned Civil Judge (Junior Division), Patiala, whereby the application moved by him for appointment of Local Commissioner to inspect the suit property has been dismissed.

2. Briefly stated, petitioner-plaintiff has filed a suit for permanent injunction for restraining the defendants from illegally encroaching upon private passage by opening/encroaching the gate or window situated in front side of the house of the plaintiff and further restraining defendants from interfering in his peaceful possession. In the said suit, the plaintiff moved an application under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner to visit the site in the dispute and report about the actual and factual position at the spot before deciding the stay application. The said application has



been opposed by the defendant-respondents and vide impugned order dated 04.03.2024, the same has been dismissed.

3. Aggrieved by the same, the petitioner has invoked jurisdiction of this Court by way of the present petition.

4. Heard learned counsel for the petitioner and with his able assistance, perused the record.

5. It is not in dispute that the suit for permanent injunction instituted by the plaintiff-petitioner is at its initial stage and the parties are yet to lead evidence. On a query of the Court, it is submitted that the issues are yet to be framed in the suit. Learned counsel for the petitioner has placed reliance upon ***Jitender @ Leela vs. Rashma, 2022 (2) CivCC 16*** and ***Tejbir and others vs. Deep Chand, 2019 (4) RCR (Civil) 351***, to contend that appointment of Local Commissioner by the Court to make local investigation does not amount to collecting of evidence on behalf of the plaintiff.

6. In the present case, the claim of the petitioner as averred in the suit has been denied by the defendants in the written statement and a categorical stand has been taken therein that the passage is not a private passage and that the suit property is not a place for *samadh*. The ownership of the plaintiff has also been denied. It is further pleaded in the written statement that the passage sought to be got inspected by way of application seeking appointment of Local Commissioner, was got brick lined by the gram panchayat.

7. It is well settled that the plaintiff has to stand on his own



legs and cannot use the process of the Court to gather evidence on his behalf. In ***Jitender @ Leela's case*** (supra), the issue in question was with regard to the parties having houses adjacent to each other having a common wall and allegedly, the defendants had restarted construction. It was in that situation that the trial Court had appointed the Local Commissioner to visit the spot and report about existing position of the house of the plaintiff and fresh construction raised near the common wall. In the said case, it was held that the existing position at the spot was required to be looked into for which Local Commissioner was appointed by the Court to demarcate the suit property, so as to ascertain the possession of the parties. It was further held that in such circumstances, it is not appropriate to conclude that the Court has appointed the Local Commissioner to collect evidence on behalf of the plaintiff. Even the judicial pronouncement in ***Tejbir's case*** (supra) is of no help to the petitioner. In ***Kanwaljit Singh Kanda @ Kamaljit Singh Kanda vs. Arya Pratinidhi Sabha Punjab (Regd.) Jalandhar, 2023 (2) RCR (Rent) 416***, the decision in ***Jitender @ Leela's case*** (supra) was distinguished.

8. In the case in hand, the parties are yet to lead evidence and at this stage, there is no material on record before the trial Court to form an opinion one way or the other. In such a situation, the application for appointment of Local Commissioner would be nothing short of collecting evidence on behalf of the plaintiff-applicant.

9. In the considered opinion of this Court, the impugned order



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does not suffer from any illegality or infirmity that would warrant interference by this Court in exercise of revisional jurisdiction.

10. Resultantly, the present revision petition being bereft of merit is dismissed.

July 29, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No