



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

SAO No.72 of 2014 (O&M)

Date of Order:15.05.2025

Kaushalya and other

.Appellants

Versus

**Mukesh (minor) through his next friend Smt. Roshni Devi
and others**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manish Soni, Advocate, for the appellants.

Mr. R.K.Gupta, Advocate

Mr. Duni Chand, Advocate, for the respondents

ANIL KSHETARPAL, JUDGE (Oral)

1. The plaintiffs assail the correctness of the First Appellate Court's order remitting the matter back to the trial court for fresh decision on the following two grounds:-

- (i) Defendant no.4 was a minor and his rights have been prejudiced because no court guardian was appointed to watch his interest.
- (ii) The trial court while appointing a Local Commissioner to record evidence did not specify the date, time and place for recording such evidence.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

3. The learned counsel representing the appellants submits that in Order 32 Rule 4 of the Code of Civil Procedure (hereinafter referred to as 'CPC'), the word 'shall' has been interpreted as 'may' and the court has incorrectly set aside the order. He further submits that the Local



Commissioner did issue notice to the counsel representing the defendants, however, he did not come forward to cross-examine the plaintiffs' witness.

4. This court has considered the submissions of the learned counsel representing the parties.

5. The suit was filed by Prithvi Singh against his four nephews including Mukesh Kumar, minor, who was impleaded through his father Narsi Ram. All the brothers jointly engaged Sh. Jitender Thakkar, Advocate. When the case came up for recording evidence, the court nominated a Local Commissioner to record evidence. However, as required under the High Court Rules and Orders, neither any date, time or place was fixed for recording evidence.

6. On the basis of un-controverted evidence of the plaintiffs, the suit was decreed, as the defendants neither cross-examined the witnesses nor led any evidence, as the defence of the defendants was struck off on the ground that they failed to pay the fee of the Local Commissioner.

7. Moreover, the minor defendant has suffered prejudice because his interest was never protected either by his father or his brothers.

8. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

9. Dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

May 15, 2025

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