

## Ajlaur Singh Vs Jagtar Singh

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** June 1, 2001

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 18 Rule 17A, Order 26 Rule 9, Order 39 Rule 2A

**Citation:** (2001) 3 CivCC 627 : (2001) 4 RCR(Civil) 292

**Hon'ble Judges:** Bakhshish Kaur, J

**Bench:** Single Bench

**Advocate:** Mr. Satinder Khanna, for the Appellant; Mr. S.S. Saron, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Bakhshish Kaur, J.

The plaintiff filed a suit for mandatory injunction directing the defendants to remove the underground pipeline installed

in his land. The suit was contested by the defendants. The parties had led evidence in support of their respective claims. When the case was fixed

for rebuttal and arguments, the plaintiff filed an application under Order 18, Rule 17-A of the CPC that he may be permitted to lead additional

evidence and also Local Commissioner may be appointed to demarcate the land in dispute. The prayer on these terms was declined by the trial

Court vide impugned order which has given rise to the present revision petition.

2. I have heard Mr. Satinder Khanna, learned counsel for the petitioner and Mr. S.S. Saron, learned counsel for the respondent No. 1.

3. Mr. Satinder Khanna, learned counsel for the petitioner, contended that initially a suit for permanent injunction was filed and later on during the

pendency of the suit, it was amended for mandatory injunction because the defendant had laid the underground pipes passing through the fields of

the plaintiff. It is also contended that the respondent has violated the order of the status-quo ordered by the trial Court by laying the underground

pipes. Thus, an application under Order 39, Rule 2-A of the Code was filed and the proceedings in that application are pending.

4. It is admitted case of the petitioner that he had filed two applications for additional evidence - one was filed in the contempt petition under Order

39, Rule 2-A of the code and the other was filed in the suit which was dismissed and the same is under challenge.

5. The impugned order has been assailed on the grounds that the learned trial Court has simply looked into the heading of the application being

under Order 18, Rule 17-A of the Code, whereas, the prayer was for the appointment of the Local Commissioner who may inspect the spot and

report to the Court regarding the field through which the underground pipes are passing. To support his view point that howsoever a party may be

negligent in leading evidence, an opportunity should be given for leading the additional evidence and he cannot be denied the right to examine any

witness on the ground that this evidence could have been produced at the time of leading affirmative evidence or when he had right to lead rebuttal

evidence. In this context, he has placed reliance on Ram Singh v. Pirthi and others 1997(2) RCR 108 : 1997(1) CCC 667 (P&H); Labh Kaur v.

Ram Asra and another 1999(4) RCR 527 : 2000(1) CCC 95 Karthy v. Parukutty 2000(1) CCC 97 (Kerala) and Jaipur Development Authority

v. Smt. Kailashwati Devi 1997(4) RCR 97 : 1997(3) PLR 880.

6. On the appointment of Local Commissioner, Order 26, Rule 9 of the Code provides that 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 the Court may issue a commission to such person as it

thinks fit directing him to make such investigation and to report thereon. The trial Court, however, vide impugned order did not consider it proper

to issue a commission. It also appears that this application for the appointment of Local Commissioner has been filed by the petitioner simply to

strengthen his case as admittedly proceedings under Order 39, Rule 2-A of the Code are also pending before the trial Court and for that reason he

wants to collect evidence through the appointment of Local Commissioner and that too at the stage when the case is already ripe for arguments.

7. In the case of Jaipur Development Authority (supra), the Apex Court has observed that a party can lead evidence if conditions mentioned

proved to exist. Whether in the given case in hand the petitioner has been able to bring out his case within the provisions envisaged under Order

18, Rule 17-A of the Code ? The answer is obvious No. His consistent stand is that the defendant- respondent had laid the underground pipeline

passing through his field, therefore, he may be directed to remove the same. By no stretch of reasoning, it can be believed that laying of the pipeline

passing underground his field was not in his knowledge, or, that after the exercise of due diligence he could not produce it at the time when he was

leading evidence. If at all he wanted to establish the fact that the pipeline is passing underneath his field and he wanted to pinpoint the same, he

should have been vigilant enough to prove this fact earlier. It is not a case that the operation of laying down the pipes was done in his absence.

Then, it could be said that he had no knowledge. If at all anything was done the same was done under his nose and within his sight. He cannot be

permitted to fill up the lacuna at a stage when the case is ripe for rebuttal and arguments.

For the aforesaid reasons, I do not find any infirmity or material irregularity in the judgment order. Resultantly, this civil revision is dismissed.

8. Revision dismissed.