

(2010) 07 P&H CK 0254

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 1784 of 2010

Baljinder Singh

APPELLANT

Vs

Sukhdev Singh

RESPONDENT

Date of Decision: July 9, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 26 Rule 9

Citation: (2011) 1 CivCC 810 : (2011) 161 PLR 616**Hon'ble Judges:** Rakesh Kumar Jain, J**Bench:** Single Bench

Judgement

Rakesh Kumar Jain, J.

The Defendant has challenged order dated 26.2.2010 passed by Civil Judge (Junior Division), Amritsar by which an application filed by the Plaintiff under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (for short Code of Civil Procedure) for the appointment of the Local Commissioner has been allowed.

2. In brief, case of the Petitioner is that Respondent/Plaintiff has filed a suit for permanent injunction against the Petitioner/Defendant seeking to restrain him from interfering in his possession over the suit land alleging that he has constructed khurlies/Mangers, Water tank in the suit property and has also planted several trees. The suit property is allegedly being used for tethering cattle and storing manure. In the written statement, it is alleged that the suit land was owned by Jumla Malkhan of village Khankot who had transferred it in the name of department of Animal Husbandry, Punjab vide registered gift deed dated 29.7.1999 and since then it is owned and possessed by the said department, who had constructed two rooms, varandah etc. for the purpose of running Civil Animal Husbandry Dispensary. The Plaintiff/Respondent did not file any replication. It was also averred that the Plaintiff has deliberately impleaded the Petitioner as the only Defendant in the suit with ulterior motive to obtain an ex parte order as the Petitioner is a resident of Canada. However, a co-villager has filed an application under Order 1 Rule 10 of the CPC in

order to protect the interest of the village and the said application is still pending. During the pendency of the suit, an application under Order 26 Rule 9 was filed by the Plaintiff/Respondent on 15.6.2009 for appointment of a local commissioner by the Court to ascertain actual and factual position on the land in dispute. The said application has been allowed by the Court vide its impugned order dated 26.2.2010 and Sh. Ravinder Singh Baweja, Advocate has been appointed as a Local Commissioner.

3. In the present revision petition, the whole grievance of the Defendant/Petitioner is that the local commissioner cannot be appointed in order to collect evidence for the Plaintiff for the purpose of proving his possession. In this regard, learned Counsel for the Petitioner has relied upon a decision of the Madras High Court in the case of Chandrasekaran and Ors. v. Doss Naidu 2005 (4) R.C.R. 456, decision of this Court in the case of Vinod Kumar v. Gram Panchayat of Village Kheri Naru and Ors. 2008 (1) R.C.R. 697 and a decision of the Madhya Pradesh High Court in the case of Ashutosh Dubey and Anr. v. Tilak Grih Nirman Sahkari Samiti and Anr. 2004 (4) R.C.R.79.

4. After notice of motion, the Plaintiff has appeared through his counsel who had submitted that revision petition against the appointment of Local Commissioner is not maintainable. He has relied upon three judgments of this Court in the case of [Sumer Chand Jain Vs. Vishnu Bhagwan Mangla](#), ; Sumer Chand Jain v. Vishnu Bhagwan Mangla (2002) 143 P.L.R. 844 and Smt. Shobha Sahni v. Prem Lata 2002 (4) R.C.R.372.

5. I have heard both learned Counsel for the parties and have perused the record with their assistance.

6. The only anxiety of the learned Counsel for the Petitioner is that the Respondent, in the garb of appointment of local commissioner is collecting evidence to prove his possession. It is submitted that the interest of the Petitioner would be adversely affected and prejudiced if Local Commissioner is allowed to prove about the possession of the Plaintiff. Since, this is the only grievance of the Petitioner in this case, therefore, I need not to refer to the judgments relied upon by both the learned Counsel for the parties because it would suffice to say that the Local Commissioner has been appointed by the Court for ascertaining actual and factual position on the spot as the Plaintiff has asserted that there are Khurlies/Mangers, water tanks and trees in the property in dispute whereas Defendant has alleged that there are two rooms and varandah on the property in dispute.

7. Thus, in my view, the anxiety of the Petitioner is totally misplaced as in the concluding part of the impugned order, the learned Court below has directed the Local Commissioner to visit the spot and to report about the actual and factual position on the spot which absolutely does not mean that the learned Court below has directed the Local Commissioner to opine as to who is in possession over the

property in dispute. The Local Commissioner has only to report what he would see on the spot, whether he would find Khurlies/Mangers or he would find rooms and varandah as alleged by both the parties. After obtaining the report, it is for the Court to appreciate the other evidence to find out as to who is in actual physical possession over the property in dispute.

8. In view of the above discussion, I do not find any merit in the present revision petition and as such the same is hereby dismissed, however, without any order as to costs.