

Present: Sh. Sahib Singh, Advocate counsel for plaintiffs.
Sh. AS Bajwa, Advocate counsel for defendants.

1. This order shall dispose off an application under Order 26 Rule 9 CPC for appointment of Local Commissioner filed by counsel for the defendants. It is averred in the application that the construction work over the suit property was carried on before filing the suit by the plaintiff and the construction had reached upto lintel level and the plaintiff has concealed all these facts from this Court at the time of filing the present suit. That to ascertain the actual and factual position at the spot regarding the construction made by the defendant in the suit property upto lintel level, it is necessary that a Local Commissioner is required to be appointed so that the actual and factual position and fact be brought before the notice of the Court. That for the just and correct decision of the case, appointment of Local Commissioner is necessary. So, prayer is made for appointment of Local Commissioner to ascertain the actual and factual position at the spot.

2. Reply to the application filed by counsel for the plaintiffs, wherein he controverted the averments made in the application and it is averred that the construction work is started on 12.04.2024 by the defendants after receiving the registered letter of compliance and order of Court dated 09.04.2024. The plaintiffs have moved application before the SHO PS Sadar Samana and SSP Patiala, but police did not take action against the defendants being a big party. The plaintiffs also filed a

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contempt petition. That a local commissioner cannot judge the age of alleged construction and in fact the defendants wanted to create evidence in their favour and they want to wear legal cloths to their illegal acts. There is no need to appoint a local commissioner and cannot be appointed for creating evidence in favour of any party. So, prayer is made for dismissal of application.

3. I have heard the learned counsel for parties and have also perused the case file very carefully and minutely. Learned counsel for parties argued as per their pleas and counter-pleas.

4. After hearing learned counsel for the parties and after going through the case file, it has come out that plaintiffs have filed the present suit for permanent injunction restraining the defendants from changing the nature of the agricultural land and raising any kind of construction over the suit land by claiming themselves to be co-owners in joint possession of the suit land. On the other hand, defendants have averred in their written statement that mother of defendant no.1 purchased the property from plaintiff for the purpose of construction of house and thereafter she transferred the land in the name of defendant no.1 and after that defendants started construction work by spending huge amount on 04.03.2024. That the plaintiff himself delivered the possession of the property to defendants and the land in possession of defendants is Gair Mumkin. Now by way of present application, defendants sought appointment of Local Commissioner to ascertain the actual and factual

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position at the spot on the ground that the construction work over the suit property was carried on before filing the suit by the plaintiff and the construction had reached upto lintel level and to ascertain the same, appointment of local commissioner is necessary. On the other hand, defendants have averred that the construction work is started on 12.04.2024 by the defendants after receiving the registered letter of compliance and order of Court dated 09.04.2024. Now after going through the pleadings of the parties, this Court is of the opinion that there is some dispute between the parties regarding the construction work done at the spot. Therefore, appointment of Local Commissioner is necessary to know the actual and factual position at the spot. Moreover, no prejudice is going to be caused to either of the party if Local Commissioner is appointed, rather it would help the Court to know about the actual and factual position at the spot, which is necessary for the just and proper decision of the case. So, in order to clear the picture regarding the land in dispute and in order to know the actual and factual position at the spot and in the interest of justice, the present application is hereby allowed and Sh. Ankit Singla, Advocate, Samana is appointed as Local Commissioner in this case with the direction to visit the spot and report regarding the actual and factual position at the spot. His fee is assessed as Rs.4000/- to be paid by the applicants/defendants. He is directed to visit the spot after giving prior notice to both the parties in persons or through their Counsels prior

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to the date fixed. As such, application in hand stands disposed of accordingly.

5. However, my observations made in this order shall have no effect on the merits of the main case.

Date of Order : 05.11.2024.
(Varinder Singh, Stenographer-II)

(Rajinder Singh Nagpal), PCS,
Sub Divisional Judicial Magistrate,
Samana. UID No.PB0330

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Present: Sh. Sahib Singh, Advocate counsel for plaintiffs.
Sh. AS Bajwa, Advocate counsel for defendants.

Arguments on application for appointment of Local Commissioner filed by defendants heard. Vide my separate detailed order of even date, the said application is allowed as detailed therein.

Now the case stands adjourned for 20.12.2024 for awaiting report of the Local Commissioner.

Date of Order : 05.11.2024.
(Varinder Singh, Stenographer-II)

(Rajinder Singh Nagpal), PCS,
Sub Divisional Judicial Magistrate,
Samana. UID No.PB0330

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