

(2022-3)207 PLR 450

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Fateh Deep Singh.

BALJIT KAUR – Petitioner,

Versus

TEHAL SINGH and others – Respondents.

CR 1603 of 2022 (O&M)

Civil Procedure Code, 1908 (V of 1908) - Easmentary rights - Own stand of the petitioner that she in no manner elucidated that how the parking of a mere trolley was causing hindrance and a cause of concern which affects her easmentary rights - Since the suit has been filed by the plaintiff, the onus lay upon her to establish through evidence her case to the hilt and cannot be allowed to create evidence through appointment of Local Commissioner.

Mr. Aman Dhir, for the petitioner.

Fateh Deep Singh, J. (Oral) - (29th April, 2022) - By way of this revision petition under Article 227 of the Constitution of India by petitioner Baljit Kaur through her attorney Nirmal Singh has sought to set aside the order dated 02.04.2022 (Annexure P-7) passed by the learned Civil Judge, Junior Division, Phillaur, whereby, an application for appointment of the Local Commissioner stands dismissed.

2. Heard Mr. Aman Dhir, Advocate for the petitioner and perused the records.
3. The present petitioner then plaintiff had filed a suit for permanent injunction directing the defendants to vacate the street after removing the obstruction thereon in the property duly described and depicted in the head note of the plaint.
4. The primary grounds in the plaint was that she was owner of the property detailed in her pleadings and that street leads to her house for the purpose of ingress and outgress and which is only street which has been illegally and forcibly obstructed by the respondents by parking a trolley in the street.
5. During the pendency of the suit, an application by the plaintiff/petitioner for appointment of local commissioner to visit the spot and report as to the actual position of this street in question was moved and vide order dated 02.04.2022, the Court of learned Civil Judge, Junior Division, Phillaur, dismissed the application.
6. Appreciating the submissions, Order 26 Rule 9 [CPC](#) vests in the Court immense power in

any suit in which the Court deems it necessary that the local investigation is necessary may for the purposes of elucidating any matter in dispute can ascertain through local commissioner to construe the state of position. The stand of the defendants/respondents is that plaintiff/petitioner had other ways to access to her home and the street in question is one of the many streets that surrounds the areas for the use of public. It is contended that it is the own stand of the petitioner that she in no manner elucidated that how the parking of a mere trolley was causing hindrance and a cause of concern which affects her easmentary rights. Since the suit has been filed by the plaintiff, the onus lay upon her to establish through evidence her case to the hilt and cannot be allowed to create evidence through appointment of local commissioner. The Court below has given a well reasoned order and there apparently appears to be no merit in the instant petition, which as such stands dismissed in limine.

*R.M.S.
dismissed.*

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Petition