

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

CMPMO No. 35 of 2016

Decided on : 28.1.2016

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Dayal Singh and another .....Petitioners

Versus

Narain Dass and ors. ....Respondents

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*Coram:*

*The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.*

*Whether approved for reporting?<sup>1</sup>*

For the petitioners: Mr. Lalit Kumar Sehgal, Advocate.

For the respondents: None.

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**Dharam Chand Chaudhary, J (oral):**

Order dated 24.11.2015 passed in an application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, registered as CMA No.156-VI/15 {C.S. No.11734/13 (98-I/14)} is under challenge in this petition. The relevant portion of the impugned order reads as under:-

“After hearing the ld. respective counsel for the parties and going through the record, it is discernible that no issues have been framed in the matter as yet. Accordingly, as without adducing evidence, it cannot be determined as to whether any boundary dispute is

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

**...2...**

there or not, allowance of the present application would not serve any purpose and as such, the same is dismissed.”

2. The perusal of the impugned order reveals that neither issues have yet been settled in the main suit nor the parties have produced the evidence. If the provisions contained under Order 26 Rule 9 of the Code of Civil Procedure are perused, local investigation is required for the purpose of elucidating the matter in dispute. What is dispute in the suit can only be ascertained as and when the issues are framed and the evidence is produced by the parties on both sides. Therefore, at this stage, no purpose is likely to be served by ordering local investigation. The trial court, therefore, has not committed any illegality while dismissing the application vide order under challenge in this petition.

3. The apprehension of the petitioners/plaintiffs that the impugned order would bar them from filing an application for appointment of Local Commissioner even at a later stage also, though is mis-conceived because the court below has observed in the impugned order that at this stage when issues have yet not been framed, the local investigation is not required and as such the same would not take away the right of the petitioners/plaintiffs to file an application for appointment of

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Local Commissioner at an appropriate stage, if need so arises. Anyhow, a clarification that the petitioners/plaintiffs will be at liberty to file an appropriate application for appointment of Local Commissioner at some later stage during the course of further proceedings in the suit would serve the ends of justice. Therefore, the impugned order is clarified accordingly with a direction to the trial court to decide the application, if any, filed by the petitioners/plaintiffs in accordance with law and un-influenced by the impugned order.

4. With the above observations, the petition is disposed of. Pending application(s), if any, shall also stand disposed of.

28<sup>th</sup> January, 2016  
(pankaj)

**(Dharam Chand Chaudhary)**  
**Judge**