

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1410 of 2015
Date of decision: 27.02.2015

Satwant Singh

....Petitioner

Versus

Sukhwant Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Sherry K.Singla, Advocate for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 5.1.2015 (Annexure P/5) whereby application filed by the petitioner/defendants for appointment of Local Commissioner, namely, a revenue official for measuring the suit land has been dismissed.

The reasoning given by the trial Court is that suit is for permanent injunction restraining the defendants from alienating specific khasra number more than their share without partition and from raising construction over suit land. The application was filed after availing last opportunity to conclude defendants' evidence and keeping in view the principle that the parties have to prove their own case the local commissioner cannot be appointed to create evidence in favour of a party, the application has been dismissed.

Counsel for the petitioner has vehemently submitted that the defendants had raised construction of a house prior to filing of the suit, therefore, the Local commissioner could help the court in coming to the conclusion as to on which portion of the land the construction had been raised.

After hearing counsel for the petitioner, this Court is of the opinion that there are two insurmountable hurdles in his way.

Firstly the maintainability of the revision petition itself as the

present revision petition is not maintainable in view of the law laid down by two Division Benches of this Court in **Harvinder Kaur Vs. Godha Ram ILR 1979(1) Punjab and Haryana 147** and **Pritam Singh and another Vs. Sunder Lal and others 1990(2) PLR 191** which have been followed by Single Bench of this Court in **Sumer Chand Jain Vs. Vishnu Kumar Mangla 2006(2) RCR (Civil) 445.**

It has been held that it is the discretion of the Court to appoint a commission and it cannot be interfered with under Section 115 CPC and also thereafter by filing a petition under Article 227 of the Constitution of India the bar would not go away. Even on merits, it was noticed that the suit is for permanent injunction and plea taken by the petitioner is that defendants have constructed a house. In such circumstances, it is for the Court to decide on the merits of the case and it is for the defendants to bring on record that construction has been raised. The demarcation by revenue official will not help the Court in adjudicating upon the issue in question since there is no issue regarding the boundaries of the property which could have helped the Court to adjudicate upon. Resultantly, there is no merit in the instant revision petition.

Accordingly, the present revision petition is dismissed.

27.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE