

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.5693 of 2015

Date of Decision: 24.12.2015

Sardar Kashmir Singh and another

.....Petitioners

Vs

Municipal Committee, Karnal

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nonish Kumar, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 02.07.2015 passed by Civil Judge (Jr. Divn.) Karnal, whereby application for appointment of Local Commissioner has been rejected.

[2]. Plaintiffs filed suit for permanent injunction against Municipal Committee, Karnal. In the said suit, application under Order 26 Rule 9 read with Section 151 CPC was moved for appointment of Local Commissioner on the ground that the case is fixed for evidence of the plaintiffs and the defendant-Municipal Committee has taken a stand in the written statement that the

site in dispute is a part which is maintained by the defendant for the benefit of the inhabitants of the locality.

[3]. Plaintiff alleged that there is no such park in existence. There was some vacant land of the defendant, out of which there was some vacant land towards the house of the plaintiffs and his neighbours, which was auctioned by the defendant in the year 1976 and thereafter plaintiffs and some neighbours gave bids to purchase the plots successfully and thereafter defendant have laid foundation of his remaining land which is still existing between the land of the defendant and the house of the plaintiffs and his neighbours.

[4]. In order to know actual and factual position prevailing at the site, a prayer for appointment of Local Commissioner was made, who would visit the spot and make the report about the existing position of the foundation between the land of the defendant and the plots purchased in open auction by the owners of the house No.530-L, 531-L, 531-R and about the fact whether any park exists or not?

[5]. The application has been contested by the defendant on the ground that the site in dispute is a park which is being maintained by the defendant-Municipal Committee. Defendant has no authority to sell the park in question. Plaintiffs have encroached upon the land of the park which vests in the

Municipal Committee. Defendant also raised objection that the process of the Court cannot be availed to create evidence in favour of the plaintiff.

[6]. The trial Court dismissed the application on the ground that the existing position of the suit land with reference to the pleadings of the parties require evidence to be led by both the parties. The claim of the plaintiffs being owner in possession is required to be proved by leading oral and documentary evidence. Plaintiffs cannot seek assistance of the Court to prove the alleged fact as pleaded in the plaint. The issue requires evidence to be led by the plaintiffs in affirmative without availing the assistance of the Court for creating evidence on behalf of the plaintiff. It is a matter of evidence as to who is in possession of the suit property and whether the suit land is vacant land or some construction has been raised upon it?

The assistance of the Local Commissioner cannot be obtained to verify this fact which are exclusively under the domain of the evidence led by the parties in order to prove their respective case. It is a settled principle of law that process of the Court cannot be availed to create evidence in favour of either of the parties to litigation. The trial Court dismissed the application vide the impugned order.

[7]. Now first consideration before this Court is to see

whether revision against the order refusing to appoint Local Commissioner is maintainable or not?

[8]. In **Harvinder Kaur and another vs. Godha Ram and another, 1979 AIR (Punjab) 76**, the Division Bench of this Court ruled that an order passed during the course of the suit proceedings would be revisable only when it determines or adjudicates some right or obligation of the parties in controversy. A revision would lie against an interlocutory order only, if it determines or adjudicates some right or obligation of the parties in controversy. Even after satisfaction of the aforesaid test, the power of revision would be exercisable by the Court subject to limitations put under sub-Section (1) and the proviso to Section 115 CPC. After deliberating upon the issue, the Division Bench of this Court held no revision would lie against an order passed under Order 26 Rule 9 CPC and the view taken in **M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531** was reiterated.

[9]. The aforesaid view was again reiterated in another Division Bench judgment of this Court in **Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418**. It was held in the said ruling that order refusing to appoint Local Commissioner does not decide any issue, nor adjudicates rights of parties for

purpose of suit and, therefore, not revisable. Refusing to appoint Local Commissioner has nothing to do with the rights of the parties. It is the discretion of the Court and, if such discretion is refused, not right of the parties prejudiced and revision is not competent against such an order.

[10]. In **Sumer Chand Jain vs. Vishnu Bhagwan Mangla 2006(2) RCR (Civil) 445**, this Court while interpreting the earlier precedents held that the revision petition was not maintainable under Section 115 CPC, then by mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. Such an order cannot be interfered with even under Article 227 of the Constitution of India. The proposition held in **Hari Om vs. Minish Kumar, 2005(2) PLR 690** was reiterated to hold that by mere change in the headnote of the petition the subject matter cannot be allowed to be wriggled out from the rigor of the law, which is otherwise well settled in view of consistent view of the Court.

[11]. In **Balbir Kaur and others vs. Pushpa Widge and others, 2006(2) RCR (Civil) 318** similar view was taken by this Court by holding that revision petition under Article 227 of the Constitution of India is not maintainable against an order refusing to appoint Local Commissioner.

[12]. In **Rajiv Kumar Batra vs. Kashmiri Lal Sika, 2010(6)**

RCR (Civil) 37, similar view was taken on the basis of consistent views taken by this Court in the previous precedents.

Similarly in **Rambir Singh vs. Gram Panchayat, Narhera and others, 2012(1) PLR 429**, it was held that revision petition under Article 227 of the Constitution of India and under Section 115 CPC against the order dismissing the application for appointment of Local Commissioner is not maintainable.

[13]. The aforesaid view is sought to be refuted by the learned counsel for the petitioners by citing **Gurdial Singh and another vs. Sardar Avtar Singh and others, 2009 AIR Punjab 164, Municipal Council, Phagwara and another vs. Naranjan Singh, 2010(5) Law Herald 4265** and **Akal Educational Society vs. Madan Lal, 2012(1) Law Herald (P&H) 923**.

[14]. The perusal of the impugned order, if read in conjunction with the precedents as cited above, reveals that the test for determination of nature of order remains the same. If the order decides some valuable right between the parties, the same is revisable in nature.

[15]. The aforesaid citation as cited by learned counsel for the petitioners do not in any way nullifies the effect of settled principles of law as held earlier. The facts involved in the aforesaid case do not dilute the dictum laid by the Division Bench judgment of this Court and consistently followed in

subsequent judgments.

[16]. The perusal of the impugned order and the controversy involved herein also show that the order has not decided any substantial right between the parties. Merely rejecting the plea to appoint a Local Commissioner has not decided anything between the parties except the plea which was raised by the plaintiffs and the same was not entertained. Even otherwise, the process of the Court cannot be involved to collect evidence for either of the parties.

[17]. Keeping in view the nature of controversy between the parties, the process of the Court cannot be invoked to verify a fact for a fact which may ultimately prove to be an evidence for the party.

[18]. In considered opinion of this Court, there is no error of jurisdiction in the impugned order passed by the Civil Judge (Jr. Divn.) Karnal, nor any illegality has been committed by the trial Court in rejecting the plea for appointment of local Commissioner.

[19]. Having considered the controversy in the aforesaid manner, this Court does not find any illegality in the impugned order, therefore this revision petition is dismissed.

December 24, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**