

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

C.R. No. 8612 of 2014
Date of decision: 06.02.2015

Raj Singh and others

....Petitioner(s)

Versus

Mukhtiar Singh

...Respondent(s)

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

Present: Mr. D.S. Khurana, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition is to the order dated 19.11.2014 whereby, the application filed by the defendants for appointment of Local Commissioner for ascertaining the existence of residential houses in the suit land has been dismissed.

The relief sought was for appointing the revenue officials for proving the fact that residential houses of the answering defendants were situated in the suit land. The application was contested on the ground that sufficient opportunities have been taken by the defendants to lead their evidence and the present application has been filed which is not maintainable and evidence could not be created by way of appointment of Local Commissioner. The said order declining the appointment of Local Commissioner has been held not to be revisable by two Division Bench judgments of this Court in *Harvinder Kaur vs. Godha Ram, ILR 1979 (1) P&H 147* and *Pritam Singh and another vs. Sunder Lal and others, 1990 (2) PLR 191*.

In such circumstances, merely because the writ petition has been filed under Article 227 of the Constitution of India would not take

away the binding precedent of the Division Bench as has been held in ***Sumer Chand Jain vs. Vishnu Bhagwan Mangla, 2006 (2) RCR (Civil) 445*** and ***Rajiv Kumar Batra vs. Kashmiri Lal Sika, 2010 (6) RCR (Civil) 37.***

Secondly, it is to be seen that the suit is for permanent injunction filed by the respondent-plaintiff that he is in continuous and cultivating possession of the land and, therefore, the submission that Local Commissioner has to be appointed to ascertain the fact whether the petitioners have got residential houses in the land in question is without any basis. It is for the defendants to prove the said fact and controvert the factum whether they are in possession or not and whether the plaintiffs are not entitled for injunction and the Local Commissioner is not to be appointed in such cases as there is no dispute regarding measurement of the land.

Accordingly, the order passed does not suffer from any infirmity which would warrant interference under Article 227 of the Constitution of India and the present revision petition is accordingly dismissed.

06.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE