

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

**CR No.2999 of o2016
Date of Decision-09.09.2016**

Paramjit Singh ... Petitioner
Versus
Trishan Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.K. Girdhar, Advocate for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged order dated 22.01.2016 passed by Civil Judge (Junior Division), Ludhiana vide which prayer for appointment of Local Commissioner was declined.

[2]. In a suit for redemption of property and permanent injunction filed by the plaintiff Trishan Singh, defendant-petitioner filed an application under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner i.e. any official of Electricity Board to visit the spot and to give report regarding actual and factual position of the spot.

[3]. Petitioner alleged that the Halqa Patwari was examined by him who had deposed that there was no colony by the name of Ranjit Nagar in village Dugri. Property was claimed to be vacant property and the plaintiff was trying to grab it. Defendant was residing in different property where electric meter was installed. In

sum and substance, defendant-petitioner intended to get the Local

Commissioner appointed for facilitating evidence by paying visit to the spot and to make enquiries from the surrounding areas about the location, name of colony and also to take photographs. Such a course would amount to collecting evidence for the party. Defendant-petitioner otherwise is entitled to lead substantive evidence in the context for which Local Commissioner is sought to be appointed. The installation of electric meter on or before a particular date can be proved by way of leading evidence or by summoning the official from the department. Similarly, the alleged installation of meter in a vacant plot as per PSPCL Rules can also be proved with reference to evidence. It is a settled principle that the process of Court in seeking appointment of Local Commissioner cannot be utilized to collect evidence in favour of either of the parties.

[4]. 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.

[5]. 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, then no prejudice would be caused to the party. Revision is not competent against such an order.

[6]. 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.

[7]. 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.

[8]. 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.

[9]. Keeping in view the criteria formulated by the Court in different precedents, I am of the view that the appointment of Local Commissioner cannot be asked to facilitate the official to collect evidence which would be used in favour of either of the parties. Parties are always at liberty to lead substantive piece of evidence. The decision of the trial Court in rejecting the prayer for appointment of Local Commissioner is not revisable as no substantive/valuable right of the party has been decided.

[10]. In view of aforesaid, I do not find any jurisdictional error in the impugned order dated 22.01.2016 passed by Civil Judge (Junior Division), Ludhiana. This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

09.09.2016
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