

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

**CR No.3528 of 2016
Date of Decision-08.09.2016**

Gurdeep Singh	... Petitioner
Versus	
State of Punjab and others	... Respondents

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

Present: Mr. Satbir Rathor, Advocate for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 23.01.2014 passed by Civil Judge (Junior Division), Mukerian vide which application for appointment of Local Commissioner was dismissed.

[2]. Plaintiff-petitioner filed a suit for permanent injunction seeking to restrain the defendants from interfering in the possession of the plaintiff and removing standing trees forcibly from the suit land.

[3]. Plaintiff claimed that he is joint owner in possession of the land measuring 44 kanals, 16 marlas situated in village Tikhawal as shown in the plaint. Plaintiff has planted various kinds of trees in the suit land and the same were in his possession towards northern side of the property in question.

[4]. Plaintiff asserted that the defendants have no right, title or interest in the trees in any manner. Defendants started asserting their ownership over the trees in question that prompted the plaintiff

to file the suit. Plaintiff took demarcation of the land in question through revenue agency who came to the conclusion that the trees were standing in the land of the plaintiff. With this background, the suit came to be instituted.

[5]. Defendants contested the suit.

[6]. During pendency of the suit, plaintiff-petitioner filed an application for appointment of Local Commission with a prayer that some revenue officers to be appointed to conduct the demarcation of the suit land in order to ascertain the status of the trees existing in the suit land.

[7]. The said application was contested by the defendants. Defendants asserted that defendants No.2 and 3 had planted the trees 30-35 years ago and these trees were being marked by the defendants regularly after 5 years. Nobody ever objected to the defendants. The trees were stated to be planted by the defendants i.e. defendants No.2 and 3 on both sides of the roads vide notification No.1122-FT-58/1195 and the trees were standing on the berms on either side of the road. The other PWD land in the State of Punjab was transferred to concerned forest department for management and since then, the defendants were maintaining the trees in question. Civil Judge (Junior Division), Mukerian vide order dated 23.01.2014 dismissed the application for appointment of Local Commissioner.

[8]. The prayer for appointment of Local Commissioner was made in order to ascertain the fact whether trees in question were standing on the spot belonging to the plaintiff or not. The main dispute between the parties is with regard to trees in question whether trees were standing in the suit land belonging to the plaintiff or otherwise?

[9]. It is a well settled principle of law that the Local Commissioner cannot be appointed to create evidence in favour of any of the party. The process of the Court cannot be utilized to collect evidence for any of the party, nor the Court can delegate its power for collection of evidence to any person.

[10]. 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.

[11]. 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.

[12]. 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.

[13]. 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.

[14]. 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.

[15]. In view of aforesaid, I do not find any jurisdictional error in the impugned order dated 23.01.2014 passed by Civil Judge (Junior Division), Mukerian . This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

08.09.2016
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