

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

**CR No.4191 of 2014
Date of Decision: 19.08.2016**

Vipin Jain**Petitioner**

Verus

Rohit Jain**Respondent**

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

Present: Mr. Amit Jaiswal, Advocate
for the petitioner.

Mr. Deepak Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. The precise issue involved in the revision petition is whether order declining to appoint local commission in a civil suit would be revisable in nature.

[2]. Petitioner has assailed order dated 04.04.2014 passed by Additional Civil Judge (Senior Division), Ambala whereby prayer for appointment of Local Commissioner in a suit for possession was declined by the trial Court.

[3]. Petitioner claimed that Revenue Officer is required to be arranged to carry out demarcation of suit property in order to prove illegal encroachment of the defendant. The prayer was

opposed by the respondent.

[4]. In the application, plaintiff-petitioner submitted that he had got the property demarcated earlier also and now in order to ascertain the extent of encroachment by the defendant-respondent, appointment of Local Commissioner was considered necessary.

[5]. Learned counsel for the respondent submitted that in the presence of earlier demarcation, the fresh demarcation would be of no consequence as the plaintiff-petitioner could lead his substantive evidence in order to strengthen his case. The process of the Court cannot be utilized to create/collect evidence for either side of the litigation.

[6]. It is a settled principle of law that the order declining to appoint Local Commissioner is not revisable order. 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.

[7]. 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, no right of the parties prejudiced and revision is not competent against such an order.

[8]. 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.

[9]. 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.

[10]. 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.

[11]. Learned counsel for the petitioner has argued that appointment of Local Commissioner can be ordered by this Court in exercise of its extraordinary supervisory jurisdiction under Article 227 of Constitution of India. There cannot be any

denial to the powers of this Court under Article 227 of Constitution of India, but the fact remains whether refusal to appoint Local Commissioner would be an order deciding substantial rights between the parties or not.

[12]. In view of aforesaid, I find that no substantial rights of the parties have been decided by refusing to appoint Local Commissioner, therefore, the extraordinary supervisory jurisdiction of this Court under Article 227 of Constitution of India is not required to be invoked and no such revision petition is maintainable. Consequently, this revision petition is dismissed.

19.08.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No