

123

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

Civil Revision No.4919 of 2016

Date of Decision: 12.08.2016

Kehar Singh

.....Petitioner

Vs

Jagdish Chander

.....Respondent

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

Present:Mr. Rakesh Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 24.05.2016 (Annexure P-1) passed by Additional District Judge-I, Fatehabad declining the prayer for appointment of Local Commissioner at appellate stage under Order 26 Rule 9 read with Section 151 CPC.

[2]. Brief facts as gathered from the record are that the suit of the respondent was decreed vide judgment and decree dated 25.08.2015 by the Civil Judge (Sr. Divn.) Fatehabad against which appeal was filed by the present petitioner. In the pending appeal, appointment of Local Commissioner was sought on the ground that placement of plot No.68 viz-a-viz. Bhamba Ram

Colony or M.C. Colony, Fatehabad can only be ascertained by way of inspection of site by the Local Commissioner. Secondly, whether plot No.68 is having area of 10 *Marlas* or 7 *Marlas* would also be ascertained by the Local Commissioner.

[3]. During the pendency of the suit before the trial Court, similar application was filed for appointment of Local Commissioner and the same was dismissed by the trial Court on 21.10.2014. The said order was not challenged by the petitioner in any manner.

[4]. On 03.08.2016, on a pointed query, the following order was passed by this Court:-

“Learned counsel for the petitioner contends that during pendency of trial, an application for appointment of Local Commissioner was declined by the trial Court vide order dated 21.10.2014. Ultimately the suit was decided against the petitioner by the trial Court, against which an appeal was filed before the lower Appellate Court. Learned counsel wants to ascertain whether the order dated 21.10.2014 was assailed in appeal or not.

List again on 12.8.2016.”

[5]. Pursuant to the aforesaid observation, it has been informed that in the grounds of appeal filed before the lower Appellate Court, no challenge was made to the order dated 21.10.2014 passed by the trial Court, rather independent

application was moved before the lower Appellate Court on 18.05.2016.

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

[12]. 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.

[13]. In considered opinion of this Court, there is no error of jurisdiction in the impugned order passed by the Additional District Judge-I, Fatehabad, nor any illegality has been committed in rejecting the plea for appointment of local Commissioner.

[14]. Having considered the controversy in the aforesaid manner, this appeal is totally found to be devoid of merits and the same is accordingly dismissed.

August 12, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No