

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

CR No.5278 of 2016

Date of Decision: 19.08.2016

Tejbir Singh and others Petitioners

Verus

Ajmer and others Respondents

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

Present: Mr. Manvinder Singh Dalal, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged order dated 06.05.2016 passed by Civil Judge (Senior Division), Kaithal vide which an application for appointment of Local Commissioner was declined.

[2]. Petitioners being plaintiffs filed an application for appointment of Local Commissioner on the ground that defendants are in unauthorized possession over part of the suit land measuring 1 kanal 13 marlas. Demarcation of suit land would suffice to ascertain the extent of encroachment by the defendants and for that, prayer of appointment of Local Commissioner was made.

[3]. The prayer was opposed by the defendants-

respondents by alleging that the suit land is joint of the parties and no partition has taken place so far. Plaintiffs being co-sharers cannot claim exclusive possession of the suit property and the defendants are not in possession of more than their shares.

[4]. It is a settled principle that a Local Commissioner cannot be appointed in favour of any party for the purposes of collection of evidence. The process of the Court cannot be utilized to collect evidence in favour of either of the party to the litigation. Refusing to appoint Local Commissioner would not decide any substantial right between the parties. Since there is no *lis* in respect of identification of the land, therefore, the appointment of Local Commissioner would definitely tell upon title in favour or against one of the party. The core issue would be whether the order declining to appoint Local Commissioner is revisable order or not.

[5]. 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.

[6]. 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.

[7]. 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.

[8]. 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.

[9]. 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.

[10]. In view of aforesaid, the revision petition against the order 06.05.2016 passed by Civil Judge (Senior Division), Kaithal in considered opinion of this Court is not revisable and therefore, this revision petition is dismissed being not maintainable.

19.08.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No