

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

CR No.5429 of 2016

Date of Decision-24.08.2016

Reepu Daman @ Ripu Daman	... Petitioner
Versus	
Baldev Singh and another	... Respondents

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

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 26.05.2016 passed by Civil Judge (Junior Division), Nakodar whereby application for permission to appoint Civil Engineer, PWD Department as Local Commissioner was declined.

[2]. Respondent-plaintiff filed a suit for permanent injunction seeking to restrain the defendants from demolishing the western wall of his house, which was commonly used and occupied by the plaintiff and defendants. Further restraint was sought against the defendants from causing damage to the wall and to the house of the plaintiff by doing wrongful acts.

[3]. Defendants contested the suits.

[4]. During pendency of the suit, trial Court appointed Sh. S.K. Bakshi, Advocate as Local Commissioner to inspect the property in dispute and to submit his report regarding actual and factual position. Petitioner asserted that the Local commissioner

submitted a wrong report and exceeded his jurisdiction while submitting the report in collusion with the plaintiff. Defendant-petitioner filed objections to the said report. Objections were kept open by the trial Court to be decided at the time of final arguments. The order to that effect was passed on 21.02.2014.

[5]. Thereafter, petitioner-defendant filed an application dated 03.02.2016 for appointment of Civil Engineer from PWD Department to ascertain the age of disputed wall as well as the house of the plaintiff. The said application was contested by the plaintiff-respondent. Trial Court vide order dated 26.05.2016 dismissed the application for appointment of Local Commissioner.

[6]. It is a settled principle of law that the process of the Court cannot be utilized for collecting evidence for either of the party. Defendant-petitioner would be at liberty to adduce substantive evidence to corroborate his line of action during trial.

[7]. 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.

[8]. 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.

[9]. 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.

[10]. 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.

[11]. 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.

[12]. In view of aforesaid, I do not find any jurisdictional error in the impugned order dated 26.05.2016 passed by Civil Judge (Junior Division), Nakodar. This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

24.08.2016

Prince

(RAJ MOHAN SINGH)
JUDGE