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

**CR No. 6466 of 2016
Date of Decision: 27.09.2016**

OM PARKASH GOYAL

....Petitioner

Vs

KALYAN SINGH AND ORS.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naveen Sharma, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.

[1] Petitioner has assailed order dated 26.07.2016 passed by Civil Judge (Junior Division), Mohindergarh vide which application for appointment of Local Commissioner under Order 26 Rule 9 CPC was dismissed.

[2] Plaintiff/petitioner filed a suit for declaration against the defendant, seeking to assail sale deed No. 5882 dated 08.09.2011 executed by defendant Nos. 1 to 4 in favour of defendant Nos. 5 to 8, on the basis of collusion with defendant Nos. 9 to 12 in respect of 12 Marlas of suit property comprised in Khasra No. 609 situated within the revenue estate of Satnali, District Mohindergarh.

Plaintiff/petitioner claimed that he had raised a pucca residential

house and shop etc. over the suit property.

[3] The acts of the defendants were claimed to be *mala fide* and not binding upon the rights of the plaintiff. The plaintiff/petitioner moved an application for appointment of Local Commissioner for the purposes of visiting the spot for assessing and verifying the extent of damage caused to the property by respondents/defendant Nos. 1 to 8. He also alleged that defendants were instrumental in collecting the rent from all the statutory tenant in an illegal manner by trespassing the property. Trial Court dismissed the application on the premise that the Local Commissioner cannot be appointed to collect evidence for any of the party. The evidence of the plaintiff had already been closed on 08.04.2012, thereafter, defendants' evidence was also closed on 02.09.2015. The case was already fixed for 23.09.2015 for rebuttal and argument. At such a belated stage, the filing of application for appointment of Local Commissioner was not deemed justified.

[4] Even otherwise, the process of the Court cannot be utilized by any of the party to seek appointment of Local Commissioner for collecting evidence. The order to refuse appointment of Local Commissioner has not decided any substantial rights between the parties, therefore, the revision against such an order is not maintainable.

[5] The decision of Division Bench of this Court in **M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another Vs. Piara Lal, 1971 PLR 531** was

duly reiterated in **Harvinder Kaur and another Vs. Godha Ram and another, 1979 AIR (Punjab) 76**. The Division Bench of this Court rules that revision would lie only against the interlocutory order if it determines and adjudicates some right and obligation of the parties in controversy. No revision would lie against such an order in the absence of any such determination.

[6] The aforesaid view was reiterated in **Pritam Singh and anr. Vs. Sunder Lal and Ors., 1990 PLJ 418** and further in **Sumer Chand Jain Vs. Vishnu Bhagwan Mangla 2006(2) RCR(Civil) 445** wherein the Court interpreted the past precedents in the context of maintainability of revision petition under Section 115 CPC viz-a-viz Article 227 of Constitution of India and held that mere change in the headnote of the petition would not be sufficient to wriggle out from the rigors of law.

[7] The aforesaid analogy was already held proper in **Hari Om Vs. Minish Kumar, 2005(2) PLR 690** and **Balbir Kaur and others Vs. Pushpa Widge and others, 2006(2) RCR (Civil) 318**.

[8] The view was further endorsed in later judgments in **Rajiv Kumar Batra Vs. Kashmiri Lal Sika, 2010(6) RCR (Civil) 37** and **Rambir Singh Vs. Gram Panchayat, Narhera and others, 2012(1) PLR 429**.

[9] In view of consisting view of this Court that the order declining appointment of Local Commissioner would not be a revisable order under Article 227 of Constitution of India and under Section 115 CPC.

[10] In view of the ground taken by the plaintiff for appointment of Local Commissioner, no such prayer can be accepted even on facts, because Local Commissioner cannot collect any incriminating material on behalf of either of the party which may be used as a piece of evidence at a later stage.

[11] In view of aforesaid, this revision petition is totally found to be devoid of merit and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

27.09.2016

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Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No