

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

C.R.No.6547 of 2015 (O&M)

Date of Decision: May 17th, 2016

Harbans Singh (since deceased) through L.R.

...Petitioner

Versus

**Gram Panchayat Village Padlu, Tehsil Shahabad, District Kurukshetra &
others**

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr.Keshav Pratap Singh, Advocate,
for the petitioner.**

**Mr.Anil Kumar Yadav, Addl.A.G.Haryana,
for the State.**

AMIT RAWAL, J. (Oral)

CM No.21070-CII OF 2015

**Prayer in the application is for impleading the L.Rs of deceased
Harbans Singh-petitioner.**

Allowed subject to all just exceptions.

**The L.Rs mentioned in the application are brought on record
for the purpose of prosecuting this revision only.**

Civil Revision No.6547 of 2015

**Petitioner-plaintiff is aggrieved of the dismissal of the
application filed under Order 26 Rule 9 of the Civil Procedure Code for
appointment of Local Commissioner.**

Mr.Keshav Pratap Singh, learned counsel for the petitioner-plaintiff submits that in the suit, relief of declaration and permanent injunction was sought in respect of Khasra No.4/2 of Rect.No.43. Site plan Annexure P-2 is annexed with the petition to prove that the land shown in green colour was given to the petitioner by the Gram Panchayat and since then he is in cultivation. In order to ascertain this fact, the jurisdiction of the trial Court was invoked for appointment of the Local Commissioner. The exchange was oral and there is no other revenue record. In order to succeed in the suit, plaintiff has to prove the existing position at the spot. Dismissal of the application by observing that it tantamounts to collecting the evidence would be neither here and there, for, even consequential relief of permanent injunction for restraining the defendants from interfering in the peaceful ownership and possession has also been sought.

Mr.Anil Kumar Yadav, learned Addl.A.G. Haryana, appearing for the State submits that the revision petition against the dismissal of the application for appointment of Local Commissioner is not maintainable and relies upon the judgment rendered by this Court in **Civil Revision No.824 of 2013 (Ganpat Versus Satvir and others)**, decided on 5.2.2013 to submit that the declaration sought in respect of Khasra No.89 min had already been acquired vide Award No.105-A for the year 1986-87 dated 13.3.1987 and thereafter a road has been constructed, which is being used by the public at large. In fact, the petitioner-plaintiff wants to get his illegal possession legalised through the intervention of the Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the ratio decidendi culled out by this Court in **Ganpat's case (supra)**, is based upon the judgment rendered by

the Division Bench of this Court in **Smt.Harvinder Kaur and another Versus Godha Ram and another**, AIR 1979 Punjab and Haryana 76.

Earlier, the revision petitions were being filed under Section 115 CPC, whereas after the amendment in the CPC, the same are being filed under Article 227 of the Constitution of India, where the Court has a wide jurisdiction and superintending power in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Surya Dev Rai Versus Ram Chander Rai & others**, 2003 (6) SCC 675, therefore, the objection qua maintainability of the revision petition is hereby rejected.

As regards the appointment of Local Commissioner, I am of the view that the plaintiff has to stand on his own legs and lead documentary evidence to prove his possession, i.e., revenue record etc., but not through the assistance of the Local Commissioner to legalise his possession. The role of the Local Commissioner is not to collect evidence. Had plaintiff placed on record certain material in support of his claim, perhaps it would have been different case. It was incumbent upon the petitioner to get the property demarcated and then stake claim.

No ground for interference is made out. Revision petition stands dismissed.

May 17th, 2016
ramesh

(AMIT RAWAL)
JUDGE