

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

**CR No.7657 of 2016(O&M)
Date of Decision:15.11.2016**

Leelu Singh and others

.....Petitioners

Versus

Janta Singh and another

.....Respondents

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

Present: Mr. Sherry K. Singla, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged order dated 23.08.2016 passed by Civil Judge (Junior Division), Talwandi Sabo vide which application for appointment of Local Commissioner filed by the petitioners-defendants was dismissed.

[2]. Plaintiffs filed a suit for possession in respect of 1 kanal, 7 marlas of land allegedly in unauthorized possession of the defendants. Land of the defendants is adjoining to the suit land. Encroachment was alleged for which suit for possession was filed.

[3]. The suit was contested by the defendants on all counts.

Defendants claimed that the suit was filed on the basis of false demarcation report. Defendants claimed themselves to be owner in possession of the suit land.

[4]. Prayer for appointment of Local Commissioner was made. The said prayer was opposed by the plaintiffs.

[5]. Trial Court dismissed the application by observing that the applicant has not mentioned the purpose for appointment of Local commissioner. The suit of the plaintiffs is based on demarcation report submitted by the Local Commissioner on 08.01.2014 which was claimed to be illegal. Defendants would have the remedy to assail the said report by way of filing objections.

[6]. It is a settled principle of law that Local Commissioner cannot be appointed to collect evidence for either of the parties. Defendants-petitioners would be entitled to lead substantive evidence to prove their case. The contention of defendants-petitioners that in respect of adjoining property, Local Commissioner was appointed by the Court and on parity, the same exercise can be exercised in respect of adjoining property.

[7]. This Court is not in a position to appreciate the arguments of learned counsel for the petitioners. At this stage, appointment of Local Commissioner in respect of adjoining

property would be entirely a different proposition and in such event, aggrieved party may resort to lawful remedy (if any). So far as appointment of Local Commissioner in respect of suit land is concerned, the same in any way will not advance the case of the defendants in any manner. Order declining prayer to appoint Local Commissioner is not a revisable order particularly in view of the fact that the said order does not decide any substantial right between the parties. Defendants have already availed number of opportunities to lead evidence.

[8]. 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.

[9]. 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.

[10]. 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.

[11]. 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.

[12]. 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.

[13]. In view of aforesaid, the present revision petition against the order dated 23.08.2016 passed by Civil Judge (Junior Division), Talwandi Sabo in considered opinion of this Court is not revisable and therefore, this revision petition is dismissed being not maintainable.

15.11.2016

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No