

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

CR No. 1231 of 2017

Date of Decision: 21.08.2017

NARINDER SINGH

-PETITIONER

VS

DHARAM CHAND & ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Satbir Rathore, Advocate,
for the petitioner.

Mr. S.S. Kanwal, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

[1]. This revision petition has been preferred by the petitioner against the order dated 04.11.2016 passed by Civil Judge (Junior Division), Dasuya whereby the application of the petitioner under Order 26 Rule 9 CPC for appointment of local Commissioner was dismissed.

[2]. Plaintiff-petitioner filed a suit for possession of land measuring 2 Kanals 12 Marlas forming part of Khasra No.1585 (5-5) as per jamabandi for the year 2011-12 as shown in red colour in the site plan. Vacant possession from the defendants was sought who were alleged to be in illegal possession of the same.

[3]. The suit was contested by the defendants. Defendants admitted that the properties of the plaintiff and the defendants are adjoining properties but no encroachment was made by the defendants. Defendant No.2 has already constructed his house since long and has been residing therein.

[4]. Plaintiff-petitioner filed an application under Order 26 Rule 9 CPC for appointment of local Commissioner. The trial Court dismissed the same vide order dated 04.11.2016 on the ground that onus was on the plaintiff to prove his own averments and the process of the Court cannot be utilized to collect evidence on behalf of the plaintiff.

[5]. I have considered the arguments of learned counsel for both the parties.

[6]. It is a settled position that no party can be allowed to take recourse to the process of the Court for collecting evidence. The order rejecting prayer for appointment of Local Commissioner is not revisable in view of ratio of law laid down in **Harvinder Kaur and another vs. Godha Ram and another, 1979 AIR (Punjab) 76; M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531 and Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418.**

[7]. The order refusing to appoint Local Commissioner

does not decide any issue on merit inasmuch as that no right of the either party is adjudicated by such order for the purpose of the suit and, therefore, such order is held to be not revisable. Refusal to appoint Local Commissioner is nothing to do with the rights of the parties. It is squarely covered under the discretion of the Court and in case such discretion is refused, no right of the party is prejudiced, therefore, revision is incompetent against such order.

[8]. 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 view expressed 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 precedents on the subject matter.

[9]. The aforesaid view was also reiterated in **Balbir Kaur and others vs. Pushpa Widge and others, 2006(2) RCR (Civil) 318; 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.

[10]. In view of aforesaid legal position, I am of the view that the plaintiff-petitioner cannot be allowed to avail process of the Court to collect evidence for him. Plaintiff has to lead his own substantive evidence in order to prove that the defendants are in unauthorized possession of the property belonging to the petitioner.

[11]. In view of above, I find that there is no error of jurisdiction committed by the trial Court.

[12]. This revision petition, is accordingly, dismissed.

21.08.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No