

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2966 of 2017
DECIDED ON: May 09, 2017

ARYA PARTHINIDHI SABHA, HARYANA

....PETITIONER...

VERSUS

SMT. SIDHI SINGH AND OTHERS

....RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashwani Bakshi, Advocate
for the petitioner.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 10.04.2017 (Annexure P-10) passed by Civil Judge (Junior Division), Faridabad whereby an application moved by petitioner-defendant No.2 for the appointment of survey commission to demarcate the suit land, has been dismissed.

2. The contention of learned counsel for the petitioner is that respondent-plaintiff has filed the suit alleging that she is the owner in possession of property situated within the revenue estate of Village Anangpur, Tehsil and District Faridabad comprising khasra nos. mentioned in the plaint whereas petitioner-defendant No.2 has claimed in his written statement and counter claim that the property comprised in Rect. No.15, Killa No.17, min, 18 min situated within the revenue estate of village Sarai Khawaja, Tehsil and

District Faridabad is owned and possessed by petitioner-defendant No.2 and respondent-plaintiff has no concern with the same. Since, there is a dispute with regard to the area, boundaries as well as the identity of the disputed property, a Survey Commission is required to be issued with a direction to demarcate the suit property, which will clinch the matter in its entirety. The ld. trial court has wrongly dismissed the application for the appointment of Survey Commission for the simple reason that a party cannot be allowed to collect the evidence by way of appointment of local commissioner and that an application earlier moved for the appointment of local commissioner by one of the parties has already been dismissed.

3. This Court has given a thoughtful consideration to the submissions made by learned counsel for the petitioner but find the same to be of without any legal substance.

4. Since, the instant revision petition has been preferred against the order whereby an application for appointment of local commissioner has been rejected, the revision petition either under Section 115 CPC or under Article 226/227 of the Constitution of India is not maintainable. To fortify this observation, we can have the reference of the judgments delivered in cases captioned as ***“Harvinder Kaur and another vs. Godha Ram and another”***1979 AIR (Punjab) 76, ***“Pritam Singh and another vs. Sunder Lal and ors”*** 1990(2) PLR 191 and ***“Sham Lal vs. Sumitra Devi, 2016(3) PLR 324”***.

5. Otherwise also, no infirmity, illegality or perversity could be pointed out by the learned counsel for the petitioner during the course of arguments in the impugned order dated 10.04.2017. It is also equally settled that evidence cannot be gathered through the aegis of Local Commissioner as

has also been observed by this Court in case titled as “*Uma Singla and another vs. The Chhachhrauli Harijan Co-op & Farming Soc. Ltd. and another*”, 2015 (2) PLJ 276.

6. Taking into consideration the aforesaid observations, the instant petition is not maintainable. Thus, this Court does not find any infirmity, illegality or perversity in the impugned order dated 10.04.2017. As such, it stands dismissed.

May 09, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes/No