

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

**Civil Revision No.4314 of 2017
Date of Decision: 31.07.2017**

Pritam Singh

.....Petitioner

Vs

Bahadar Singh and others

.....Respondents

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

Present: Mr. H.S. Saini, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred by the petitioner against the order dated 23.05.2017 (Annexure P-5) passed by the Civil Judge (Jr. Divn.) Dera Bassi vide which application for appointment of Local Commissioner to demarcate the suit land was dismissed.

[2]. Brief facts are that the plaintiffs filed a suit for vacant possession of land measuring 60 sq. yards with defined dimensions mentioned in the headnote of the plaint. In the said suit, application under Order 26 Rule 9 CPC read with Section 151 CPC was moved for appointment of a Revenue Officer as Local Commissioner to visit and demarcate the land measuring 1 Kanal 8 Marlas comprised in *Khewat* No.111, *Khatoni* No.151

Khasra No.67//1/3(1-8).

[3]. The application was contested by the defendants on various counts by filing written statement.

[4]. Trial Court dismissed the application vide the impugned order on the ground the plaintiffs are required to prove that they are entitled to the possession of the suit land on the grounds as pleaded in the plaint. The appointment of Local Commissioner would amount to collection of evidence and the process of the Court cannot be availed to create evidence in favour of either of the parties to litigation. That is how the present petition came to be filed before this Court.

[5]. Learned counsel for the petitioner by placing reliance upon **Deepak Narula and Shri Satruhan Dwivedi and others, 2014(2) PLR 167** and **Ran Singh and another vs. Jagir Singh etc., 2015(2) PLR 42** contended that the revisional jurisdiction of the High Court is wide enough to cover examination of incorrect order in its supervisory jurisdiction so as to see that any irregularity or illegality is not committed by any Court below. The Court ought to have appointed the Local Commissioner to identify the property in question with reference to the revenue record. The boundaries of the property can be decided effectively by means of report of the Local Commissioner and the same would serve as an helping hand for deciding the

controversy in an effective manner.

[6]. Having heard the learned counsel for the petitioner, I am of the view that the application in question was filed in the suit for possession of the vacant property. Plaintiff himself was required to prove his entitlement for the possession with reference to his substantive pleadings and evidence. Plaintiff cannot seek mechanism of the Court to collect evidence for himself after demarcating the suit property. Such a course is not possible and the plaintiff seeks to establish his possession with the process of the Court by collecting such evidence.

[7]. 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.**

[8]. 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.

[9]. 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.

[10]. 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**.

[11]. In **Sri Subhas Mandal and anr.'s** (supra) the facts involved were to the effect that the third party, who was instrumental in raising wall was sought to be impleaded on the basis of report of the Local Commissioner. Supervisory jurisdiction was exercised, when the Subordinate Court had failed to exercise jurisdiction conferred upon it. It is not a case that the trial Court has no power to appoint Local Commissioner in view of facts and circumstances of the case. The issue is that once the trial Court has exercised its jurisdiction to find that the case is not worth consideration for an appointment of a Local Commissioner, then in such eventuality, revision petition under Section 115 CPC and under Article 227 of the Constitution of India is not maintainable.

[12]. The exercise of jurisdiction under Article 227 of the Constitution of India is dependent upon the error of jurisdiction exercised by the trial Court or failure of jurisdiction so vested in it. It is a case of proper exercise of jurisdiction by the trial Court, based on precedents on the issue. Once the jurisdiction has been exercised against the petitioner, then it does not lie to the mouth of the petitioner that in the light of some precedents of different High Courts, the jurisdiction has not been properly exercised.

[13]. The perusal of the impugned order and the controversy

involved herein also show that the order has not decided any substantial right between the parties. Merely rejecting the plea to appoint a Local Commissioner has not decided anything between the parties except the plea which was raised by the plaintiffs and the same was not entertained. Even otherwise, the process of the Court cannot be involved to collect evidence for either of the parties. Keeping in view the nature of controversy between the parties, the process of the Court cannot be invoked to verify a fact for a fact which may ultimately prove to be an evidence for the party.

[14]. The judgments/precedents cited by learned counsel are distinguishable in view of nature of prayer. The appointment of Local Commissioner in the controversy of the like nature would be against the settled principle of law. Any alleged encroachment made by any of the party would be proved with reference to the substantive evidence to be led by the party concerned. Similarly raising of wall by any of the party in the land would also be proved by substantive evidence to be led the parties. It is not a case wherein placement of two *khasra* numbers has to be determined by the Local Commissioner, even if placement of two *khasra* numbers is determined, the factum of alleged encroachment would only be proved by way of leading substantive evidence by the party concerned. In the light

of nature of controversy, the appointment of Local Commissioner would not be in the interest of justice.

[15]. In considered opinion of this Court, there is no error of jurisdiction in the impugned order passed by the Civil Judge (Jr. Divn.) Dera Bassi, nor any illegality has been committed in rejecting the plea for appointment of local Commissioner, therefore this revision petition is dismissed.

July 31, 2017

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No