

C.R. No.437 of 2017
Date of Decision: 23.01.2017

Suresh Kumar and others ...Respondents

Briefly, the facts of the case are that plaintiffs-respondents No.1 and 2 filed a suit for permanent and mandatory injunction against the present petitioners-defendants No.1 to 3. Notice in the said suit was issued to the petitioners. Thereafter, the petitioners filed their written statement and contested the suit on the ground that the land, in dispute, is owned and possessed by petitioners/defendants No.1 to 3. They are having possession of the suit land since the time of their ancestors. During defendant's evidence, the petitioners filed an application under Order 26 Rule 9 CPC for appointment of Local Commissioner on the ground that the defendants are

taking contradictory stand regarding the suit land and the appointment of Local Commissioner was necessary to visit at the spot and get report regarding the existing position of the suit land.

Notice in the said application was issued to the respondents/plaintiffs and they filed their reply also. After considering the reply, the trial Court passed the impugned order dated 01.09.2016 and dismissed the application, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that the appointment of Local Commissioner is necessary to report about the existing position of suit land as both the parties were taking contradictory stand by way of evidence led by them. The report to be submitted by Local Commissioner would assist the Court to reach the conclusion and to decide the controversy in the case in hand. Without taking into consideration these factors, the application had been dismissed.

Heard the arguments of learned counsel for the petitioners and have also perused the impugned order.

The application for appointment of Local Commissioner was moved by the petitioners on the ground that there were contradictory versions relating to possession of suit land and appointment of Local Commissioner was necessary to reach to just conclusion by the trial Court. Plaintiff-respondents filed a suit for permanent injunction restraining defendant Nos.1 to 3 in their peaceful possession on the land, in dispute. In the plaint, the plaintiffs have stated themselves to be owner in possession over the suit property. The application for appointment of Local Commissioner has been moved to bring factual position with regard to

possession over the suit property.

The case is at the fag end as the plaintiff-respondents have already led their evidence. Now the case is fixed for defendants evidence and some of the witnesses have already got recorded their statements. The purpose of appointment of Local Commissioner is not to collect evidence on behalf of either party as the possession is to be proved by both the parties by leading their cogent evidence.

Order 26 Rule 9 of CPC reads as under :-

“Commission to make local investigations. - In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any meson profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.”

No doubt, as per said provision, the Court has ample power to appoint Local Commissioner to make local investigation, in case, the same is necessary for just decision of the case. However, the object of local investigation is not to collect the evidence on behalf of either party but the purpose is to obtain such evidence, which from its peculiar nature, can only be had on spot with a view to elucidate any point which is left doubtful on evidence produced before the Court.

In the present case, the petitioners have filed an application for appointment of Local Commissioner to verify the factum of possession over the land in dispute. It appears that by moving an application for appointment of Local Commissioner, the petitioners had virtually requested the Court to collect the evidence qua to their possession. The provisions of

Order 26 Rule 9 of CPC cannot be used for said purpose. The petitioners are required to lead their evidence to establish their possession over the land, in dispute but cannot use the Court process to collect the evidence on their behalf.

In ***Pritam Singh and another v. Sunder Lal and others, 1990 (2) PLR 191***, a Division Bench of this Court by relying upon the decision of this Court rendered in ***Harvinder Kaur v. Godha Ram, ILR 1979(1) Punjab and Haryana 147*** has observed that no revision would lie against an order passed under Order 26 Rule 9 of the Code.

This Court in subsequent judgment rendered in ***Sumer Chand Jain vs Vishnu Bhagwan Mangla 2006(2) RCR (Civil) 445*** by placing reliance upon Harvinder Kaur's case (supra) and Pritam Singh's case (supra) observed as under :-

“ In two Division Bench decisions of this Court in ***Smt. Harvinder Kaur and another v. Godha Ram and another AIR 1979 Punjab and Haryana 76*** and ***Pritam Singh v. Sunder Lal 1991(1) RRR 356***, it has been held that the order refusing to appoint the Local Commissioner under Order 26 Rule 9 C.P.C is not revisable under Section 115 C.P.C., therefore, such an order should not be interfered now under Article 227 of the Constitution of India. In this regard, in ***Hari Om v. Minish Kumar (2005-2) PLR 690***, it was observed by this Court that if a revision petition under Section 115 C.P.C. against the impugned order is not maintainable, then by mere change in the head note of the petition, the substance cannot be replaced to wriggle out from the rigors of law which is well settled that no revision petition under Section 115 C.P.C is maintainable.”

On the same point are the decisions of this Court in subsequent

judgments rendered in *Bant Singh alias Balwant Singh and another v. Raghubir Singh and others* 2008(4) RCR (Civil) 260: 2008(2) RCR (Rent) 297 and *Rajiv Kumar Batra v. Kashmiri Lal Sika* 2010(6) RCR (Civil) 37 in which also it has been held that revision petition either under Article 227 of the Constitution of India or under Section 115 of the Code is not maintainable against an order dismissing application for appointment of Local Commissioner.

In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

In view of facts and law position as discussed above, I am of the considered view that no interference is required in the impugned order and as such, the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

23.01.2017
gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes