

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

CR No.4815 of 2016

Date of decision: 23.02.2017

Hari Singh

..Petitioner

Versus

Baljeet Singh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Ramesh Sindhar, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 07.04.2016 (Annexure P-4) passed by Civil Judge (Junior Division), Gurgaon, whereby, the application moved by the petitioner for appointment of Local Commissioner has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that the petitioner-plaintiff along with perform respondents filed a suit for possession with consequential relief of permanent injunction of their share in the property in dispute as per revenue record entered in accordance with the family settlement. During pendency of the suit, the petitioner-plaintiffs filed an application for appointment of Local Commissioner so as to verify the existing facts and circumstances in dispute on the ground that respondents No.1 to 3 have encroached upon the land of the petitioner, which was allotted to him in family partition. However, said

application was dismissed vide order dated 07.04.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the controversy involved in the suit is regarding demarcation and possession of respective share, therefore, it is necessary to get the fact verified by way of appointment of Local Commissioner and report as to whether parties are in occupation of their respective share. Learned counsel further submits that for verification of the existing position of the disputed property and for just decision of the case, the appointment of Local Commissioner is necessary. The trial Court has dismissed the application only on the ground that earlier in February 2007, the demarcation has already been done at the instance of petitioner-plaintiff. Learned counsel also submits that no finding whatsoever has been made in the impugned order as to how the appointment of Local Commissioner is not necessary for just decision of the case. Learned counsel for the petitioner has also relied upon judgments of this Court in ***Gurdial Singh and others vs. Municipal Committee, Morinda, 1998(3) ICC 277*** and ***Banarasi Das vs. Sardha Ram and others, 2015(9) RCR (Civil) 590*** in support of his contentions.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The facts relating to filing of suit by the petitioner-plaintiff, moving of an application for appointment of Local Commissioner and passing of impugned order are not disputed.

The application for appointment of Local Commissioner has

been moved on the ground that for verifying the specific position of the land in dispute, the appointment of Local Commissioner is necessary. Reply to the said application was filed wherein certain objections were raised by the respondents-defendants. It has been stated in the reply to the application that the petitioner-plaintiffs are trying to create evidence. Earlier also, the petitioner-plaintiffs filed a suit titled as 'Hari Singh vs. Baljeet', which was dismissed as withdrawn vide order dated 12.12.2013 on the joint statement of plaintiff and defendants wherein it was stated by the plaintiff that he does not want to prosecute the suit as there was no threat from the defendants. Neither any specific date or time nor the manner of alleged illegal encroachment by the defendants over the land belonging to the petitioner-plaintiffs has been mentioned. Even the application moved by the petitioner-plaintiffs was also dismissed on 08.11.2013. The relevant portion of the impugned order is reproduced as under: -

“ *Perusal of certified copy of Order dated 12.12.2013 shows that the suit was withdrawn on the joint statement of plaintiffs and defendants wherein plaintiffs stated that he did not want to prosecute the suit as there was no threat from the defendants. Plaintiffs have also failed to aver in the plaint as to when and how they were dispossessed by defendants. There is no specific time or date or the manner about the alleged illegal encroachment by the defendants over the suit land belonging to the plaintiffs.*

There is no doubt that in appropriate cases a

Local Commissioner may be appointed to carry out demarcation if the same is found desirable in the given circumstances. However, appointing L.C. is not the one and only method and there is no prohibition of law that a party cannot demarcate the suit land from a competent person/authority. The present application cannot be decided in isolation of other facts in the case and the factual backgrounds of the present case does not entitle the plaintiffs to have the present application allowed in their favour as the whole case of plaintiffs is dependent upon the illegal encroachment by the defendants which found to be itself contradictory of the statement of the plaintiffs on 12.12.2013 in the earlier suit (as mentioned). Moreover a perusal of Order dated 08.11.2013 from Ld. Predecessor Ms. Jogindri C.J.(JD), Gurgaon shows that plaintiffs got demarcated the land in February 2007 by a retired Revenue Official through Tehsildar and the same report was not admitted by the defendants. Plaintiffs have failed to provide any such details in the present application whether or not the land has been previously demarcated by any competent person/ or authority.”

On perusal of the impugned order as well as after hearing arguments of learned counsel for the petitioner, it is apparent that the prayer

for appointment of Local Commissioner has been made only to verify the respective position of the land in dispute in possession of the petitioner-plaintiffs whereas the petitioner-plaintiff himself got demarcated the land in the month of February 2007 by a retired Revenue Official through Tehsildar and the report was not admitted by the defendants. Nothing has been mentioned in the application with regard to previous demarcation made by the competent authority.

It has been held in various judgments of this Court as well as Hon'ble the Apex Court that 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 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.”

In the present case also, the petitioner has 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 petitioner had requested the Court to collect the evidence qua to his possession whereas the provisions of Order 26 Rule 9 CPC cannot be used for said purpose. The petitioner is required to lead his evidence to establish his 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 facts and the law position as discussed above, no interference is required in the impugned order and as such, the present revision petition, being devoid of any merit, is hereby dismissed.

23.02.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No