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

**Civil Revision No.5056 of 2017
Date of Decision: 01.08.2017**

GURBACHAN LAL

.....Petitioner

Vs

SUKHDEV SINGH AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Parvinder Singh, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred by the petitioner against the order dated 17.05.2017 (Annexure P-5) passed by the Civil Judge (Jr. Divn.) Mohali vide which application for appointment of Local Commissioner was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for possession of defined portion shown as 'ABC' in the rough site plan attached with the plaint by alleging that the defendants have encroached upon the same and they have also raised construction over the portion in question. In the said suit, application under Order 26 Rule 9 CPC read with Section 151 CPC for the appointment of Local Commissioner to verify the

existing position at the spot was filed.

[3]. The application was contested by the defendants on the ground that the plaintiff never got the property demarcated prior to the filing of suit by any revenue official. It was submitted that the appointment of Local Commissioner would amount to collection/creation of evidence and assistance of the Court cannot be taken by the plaintiff to prove his possession.

[4]. Trial Court dismissed the application vide the impugned order on the ground that since the appointment of Local Commissioner would amount to collection of evidence, therefore, the process of the Court cannot be availed to create evidence in favour of either of the parties to litigation. Plaintiff was required to lead convincing and cogent evidence for the purpose of proving his case.

[5]. I have heard learned counsel for the petitioner.

[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 **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.

[11]. 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.

[12]. 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.

[13]. The plaintiff can lead his substantive evidence in order to corroborate his plea, but he cannot seek process of the Court for collecting such evidence by way of appointment of the Local Commissioner. The demarcation, if any, can be made by the revenue officials under Section 101 of the Punjab Land Revenue Act (for short 'the Act'). Even in the procedure prescribed in '*Hadd Shikni*' cases the right of a party to seek appointment of the Local Commissioner is not absolute. Even

an order passed by the Revenue Officer under Section 101 of the Act is not conclusive.

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

August 01, 2017

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned Yes/No

Whether reportable Yes/No