

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 5361 of 2017 (O&M)
Date of Decision: August 17, 2017

Darshan Kaur

... Petitioner

Versus

Harjit Singh Hothi

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Harsh Bunker, Advocate,
for the petitioner.

ANIL KSHETARPAL, J.

Defendant-petitioner has filed the present revision petition against the order dismissing the application filed by the defendant under Order 26 Rule 9 CPC refusing to appoint a Local Commissioner.

At the outset, it must be noticed that as per two Division Bench judgements of this Court, order refusing to appoint a Local Commissioner is not revisable. Two Division Bench judgements are reported as 1979 Punjab law Journal 562 *Smt. Harvinder Kaur and another Vs. Godha Ram and another* and 1990 (2) PLR 191 *Pritam Singh and others Vs. Sunder Lal and others*.

Learned counsel for the petitioner has submitted that both the judgements are with respect to maintainability of revision petition under Section 115 CPC, but the present revision petition has been filed under Article 227 of the Constitution of India.

I have considered the submission of the learned counsel for the petitioner. Under Article 227 of the Constitution of India, this Court only

has the power of superintendence. The jurisdiction of the Court under Article 227 of the Constitution of India is much narrower than the jurisdiction of this Court under Section 115 CPC. In exceptional circumstances, power of superintendence can be used. However, merely because a Local Commissioner has not been appointed, the revision petition cannot be held to be maintainable, unless there is some exceptional circumstance.

Even otherwise, a reading of the order would show that both the parties had concluded their evidence. The dispute in the present case was with respect to the possession of house. The learned trial Court while dismissing the application has found as under: –

“3. Perusal of record revealed through the present application, defendant has sought appointment of local commissioner to report qua the existing/running position of electricity meter bearing No.NP21/1626 at the spot. It is clear from the perusal of record that earlier also an application under Order 26 Rule 9 read with Section 151 CPC was filed by the plaintiff, which has been hotly opposed by the present defendant, who has themselves preferred to move this application at the fag end of the trial, when only documentary evidence has been left to be led on their part. Further more, it is a settled law that local commissioner cannot be appointed by the court to collect evidence, rather the defendant has to prove his own case. Accordingly, the application in hand is dis-allowed.”

Taking into consideration the aforesaid findings recorded by the trial Court, I do not find any good ground to interfere with the order

passed by the civil Court in exercise of supervisory jurisdiction.

Revision petition is dismissed.

17.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No