

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5914 of 2015
Date of Decision: 18.07.2017

Sham Sunder and anotherPetitioners
Vs
Sadanand and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Vipin Mahajan, Advocate
for the petitioners.

Ms. Ravinder Kaur Manaise, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 13.05.2015 passed by Civil Judge (Junior Division), Gurdaspur, whereby permission for appointment of Local Commissioner in terms of Order 26 Rule 9 CPC was declined.

It is a settled position that none of the party can use the Court mechanism to collect the evidence. The order declining to appoint Local Commissioner is not revisable in view of ratio laid down in **Harvinder Kaur and another Vs. Godha Ram and another, 1979 AIR (Punjab) 76, M/s Mohinder Kumar Rajinder Parkash Dalmir Singh @ Dalmira and Mangal Singh and another Vs. Piara Lal, 1971 PLR 531** and **Pritam Singh and another Vs. Sunder Lal and others, 1990 PLJ 418.**

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, therefore, such order is held to be not revisable in nature.

In **Sumer Chand Jain Vs. Vishnu Bhagwan Mangla,** **2006(2) RCR (Civil) 445** and **Hari Om Vs. Manish Kumar,** **2005(2) PLR 690**, the Court while interpreting the law held that the revision petition under Section 115 CPC was not maintainable, then by a 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.

In view of above, I am of the view that the process of the Court for appointment of Local Commission cannot be utilized to collect evidence in the facts and circumstances of the case. Consequently, the present revision petition stands dismissed. However, petitioners would be at liberty to lead their substantive evidence in order to prove that the disputed trees are standing in the land belonging to them.

July 18, 2017.

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No