

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

CR No.5705 of 2017

Date of decision : 05.09.2017

Smt. Geeta Devi

...Petitioner

Versus

Vinod Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Johan Kumar, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.3 is in revision petition against the order dated 16.05.2017 passed by Additional Civil Judge (Senior Division), Meham, District Rohtak, dismissing the application for appointment of the Local Commissioner.

Learned trial Court while passing the order on 02.05.2017 has observed as under:-

“4. The perusal of file reveals that vide order dated 8.9.2015, Halqa Girdawar was appointed as Local Commissioner to demarcate the suit property and on 12.1.2016, the report of Local Commissioner was received. The report of Local Commissioner placed on file shows that the applicant Geeta Devi herself has stated to the Local Commissioner that there is no requirement for demarcation as the matter has been compromised and she has submitted an affidavit in the Court in this regard. Once a specific

order has been made by the Court for demarcation of the suit property, it is the duty of the applicant to obey the said order and allow the L.C. to conduct the demarcation. Since the applicant has herself objected the demarcation, she cannot be allowed to take benefit of her own wrong. She has no authority to deny the demarcation once a specific direction has been issued by the Court. In these circumstances, this Court does not deem it fit to allow the present application of the applicant who has abused the process of the Court. Hence, the present application is hereby dismissed accordingly. Now, to come up on 16.5.2017 for evidence of the plaintiff subject to last opportunity. It is clarified that no further opportunity will be given to the plaintiff for evidence.”

Learned counsel for the petitioner has submitted that the plaintiff defrauded the defendant No.3 and entered into a settlement but it is not being honoured. He has further submitted that although petitioner has complied with the terms of the settlement, however, plaintiff is resiling therefrom. He has further submitted that the Local Commissioner was appointed to demarcate the suit property which is absolutely essential for the decision of the case.

I have considered the submission. However, I do not find any merit in the same. As far as settlement between the parties and violation thereof is concerned, the same cannot be taken as the subject matter of the adjudication in the present revision petition.

Next submission of the learned counsel is that the demarcation of the suit property is absolutely necessary. The parties are required to lead evidence in support of their case. In the present case, the trial Court did

appoint Local Commissioner on the application of defendant No.3 vide order dated 08.09.2015. However, she herself did not allow the Local Commissioner to carry out the demarcation. In these circumstances, it is for her to lead evidence and prove the case. The Court cannot collect the evidence on behalf of a particular party.

Still further, it has been held by the Hon'ble Division Benches in the judgment reported as *1979 PLJ 562 titled as Harvinder Kaur and another Vs. Godharam and another*, *1990(2) PLR 191 titled as Pritam Singh and others Vs. Sunder Lal and others* that the revision petition against the order dismissing the application for appointment of the Local Commissioner is not maintainable.

For the reasons recorded above, I do not find any good ground to interfere with the order passed by the trial Court.

Revision petition is dismissed.

05.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No