

(232) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7312 of 2017 (O&M)

Date of decision:31.10.2017

Bhajan Singh.

.... Petitioner

Versus

Harjit Singh and another.

.... Respondents

BEFORE : HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Amit Dhawan, Advocate for the petitioner.
Ms. Sukhpreet Kaur, Advocate for respondents
No.1 and 2.

B.S. Walia, J. (Oral).,

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 09.10.2017 (Annexure P6) passed by the learned Civil Judge (Junior Division), Nakodar in civil suit titled as Bhajan Singh v. Harjit Singh and another dismissing the application filed by the petitioner/plaintiff (hereinafter referred to as the petitioner) under Order 26 Rule 9 CPC for appointment of Local Commissioner.

[2] Brief facts of the case leading to the filing of the revision petition are that the petitioner filed a civil suit for possession of a house situated within 'lal lakeer' of abadi of village Kotla Heran, Tehsil Shahkot, District Jalandhar on the averments that the petitioner and his mother were residents of U.K. and the respondents/defendants (hereinafter referred to as the respondents) had taken forcible possession of the house in question after breaking its lock in the year 2012 and had also stolen valuable articles lying

in the house in question whereupon petitioner through his attorney got FIR No.223 dated 12.12.2013 under Sections 380, 448, 427 and 34 IPC registered against the respondents i.e. his nephew and nephew's wife at Police Station Shahkot, District Jalandhar. Challan has been filed against the respondents and they are facing trial.

[3] On appearance in the civil suit, the respondents filed a written statement on 10.08.2016 taking up the plea that the petitioner and his mother were not owners of the suit property instead the same was owned by Joginder Singh, father of respondent No.1 and the disputed house was part and parcel of their house.

[4] The petitioner filed a replication to the written statement to the effect that partition had taken place amongst the father of respondent No.1 and his brothers about 15 years ago and a few years back, the respondents had constructed a new house over the portion which had fallen to their share i.e. on the Northern side adjoining the house in dispute. Besides, the floor of the house of the respondents was three feet higher than the house of the petitioner.

[5] The petitioner led evidence to show that the house in question was owned by him and his mother and that the respondents had taken forcible possession of the same. On the other hand, the respondents in their evidence led evidence that the house in dispute was part and parcel of their house and the level of the house in dispute as well as of their house was the same. The stand of the respondents is controverted by the petitioner on the ground that the house in dispute was constructed about 50/60 years ago whereas the respondents had constructed their house about 14/15 years ago; besides, roof

of the house in dispute was of 'wooden balas' while roof of the house of the respondents was of 'lintel'.

[6] In the aforementioned background, the petitioner moved an application under Order 26 Rule 9 CPC for appointment of Local Commissioner to inspect the suit property to ascertain the factual position in order to enable the same to come on record. However, the aforementioned application was dismissed by the learned Civil Judge (Junior Division), Nakodar vide order dated 09.10.2017.

[7] The impugned order has been challenged on the ground that the appointment of a Local Commissioner was necessary to ascertain the correct position as to whether the house in dispute was part and parcel of house of the respondents and the Local Commissioner could ascertain whether the level of the house in dispute and the house of the respondents was same or not besides, whether the house in dispute was 50/60 years old as also the age of the house of the respondents as also whether the roof of the house in dispute was of 'wooden balas' while the roof of the house of the respondents was of 'lintel'. It was contended that on ascertainment of the aforementioned position, it would stand established that the suit property was not part and parcel of the house of the respondents.

[8] I have considered the submissions made by learned counsel for the petitioner. A perusal of the impugned order reveals that the learned Civil Judge (Junior Division), Nakodar dismissed the application primarily on the ground that the petitioner was required to prove his case by standing on his own legs and it was settled law that a Local Commissioner could not be appointed to collect evidence on behalf of a party and that if the Local Commissioner was appointed to ascertain the points sought to be established

by the petitioner, the same would tantamount to collection of evidence which was not permissible. Another aspect which needs noticing is that it stands settled by various decisions of this Court that a revision does not lie against an order on application under Order 26 Rule 9 CPC.

[9] A co-ordinate Bench of this Court in case titled Leelu Singh and others vs Janta Singh and another, CR No.7657 of 2016 decided on 15.11.2016 by relying upon a Division Bench of this Court in M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another v. Piara Lal, 1971 PLR 531 held that no revision would lie against an order passed under Order 26 Rule 9 CPC. A decision to similar effect was reiterated by another Division Bench of this Court in Harvinder Kaur and another vs Godha Ram and another, 1979 AIR (Punjab) 76 by holding that an order passed during the course of the suit proceedings would be revisable only when it determined or adjudicated some right or obligation of the parties in controversy. The aforesaid view was also reiterated by another Division Bench of this Court in Pritam Singh and another vs Sunder Lal and others, 1990 PLJ 418 by holding that order refusing to appoint Local Commissioner did not decide any issue, nor adjudicated rights of parties, therefore, the same was not revisable. As refusing to appoint a Local Commissioner has nothing to do with the rights of the parties, it is the discretion of the Court and where such discretion is refused to be exercised in favour of a party, the aggrieved party cannot contend that prejudice has been caused to it. A revision would not lie against such an order nor is a revision petition under Article 227 of the Constitution of India maintainable against such an order in view of the decision in Sumer Chand Jain vs Vishnu Bhagwan Mangla, 2006 (2) RCR (Civil) 445. Likewise in Balbir Kaur and

others vs Pushpa Widge and others, 2006 (2) RCR (Civil) 318, similar view was taken by this Court by holding that a revision petition under Article 227 of the Constitution of India is not maintainable against an order refusing to appoint a Local Commissioner. Similar view was taken in Rajiv Kumar Batra vs Kashmiri Lal Sika, 2010 (6) RCR (Civil) 37; Rambir Singh vs Gram Panchayat, Narhera and others, 2012 (1) PLR 429. In the light of the above, a view different than the one as has consistently been taken by this Court in the decisions referred to above does not merit acceptance.

10. Accordingly, finding no circumstances warranting interference with the order passed by the learned trial Court, the revision petition is dismissed.

(B.S. Walia)
Judge

31.10.2017

ps

Note:-

1. Whether the order is speaking/reasoned: Yes/No.
2. Whether the order is reportable : Yes/No.