

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

CR No.973 of 2017

Date of decision: 09.02.2017

Prem Chand

..Petitioner

Versus

Randhir Singh

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Munish Puri, Advocate
for the petitioner.

Daya Chaudhary, J.

Petitioner-Prem Chand filed a suit for permanent injunction restraining the defendant from interfering, encroaching upon, dispossessing, laying rasta, constructing Gali over the land in dispute before the trial Court. Suit was decreed in favour of the petitioner vide judgment and decree dated 16.02.2015. Thereafter, an application was moved by the petitioner-decree holder under Order 21 Rule 32 read with Section 151 CPC for taking strict legal action against judgment debtor/respondent for causing willful disobedience of decree dated 16.02.2015 passed against him by attaching the property of the judgment debtor. Said application is still pending. After judgment and decree passed in the civil suit, execution petition was filed by the plaintiff-petitioner and during pendency of the execution, an application was moved for appointment of Local Commissioner. However, the application moved by the petitioner under Order 26 Rule 9 CPC was dismissed vide order dated 10.11.2016, which is subject matter of challenge

in the present revision petition.

Learned counsel for the petitioner submits that in spite of passing of judgment and decree, the respondent is still indulging in causing willful breach and disobedience against the judgment passed by the trial Court. Learned counsel further submits that for taking final decision of the dispute between the parties, the appointment of the Local Commissioner is necessary for the demarcation of the decretal land and to report as to who is in actual and factual possession and whether the passage falls within the decretal land or outside the land. In the reply filed to the application, it was mentioned that the applicant has concealed material facts that in civil suit filed by Sukhdevi, the mother of the respondent, against the applicant-petitioner Prem Chand, the Local Commissioner was appointed with the consent of both the parties. It was mentioned in the report of Local Commissioner that Sukhdevi was owner in possession of Khasra No.3017/2970/1794 measuring 11 marlas. It was also mentioned in the reply that report of Local Commissioner was already on record and the plaintiff-petitioner had already cross-examined the Local Commissioner. It was also mentioned in the reply that the appointment of Local Commissioner at this stage is not necessary. The application moved by the petitioner for appointment of Local Commissioner was dismissed on the ground that the case is fixed for evidence of decree-holder and an issue has already been framed to the effect as to whether JD has caused willful disobedience of judgment and decree dated 16.02.2015.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on

the file.

The facts relating to filing of suit and decretal of suit by way of judgment and decree are not disputed. It is also not disputed that the petitioner has already filed application under Order 21 Rule 32 CPC for taking action against judgment debtor for causing willful breach and disobedience of decree dated 16.02.2015. An application was also filed for appointment of Local Commissioner for demarcation of the suit land, which has been dismissed. The purpose of filing application for appointment of Local Commissioner is to verify on the basis of report of Local Commissioner the factual and actual position of land in dispute. In the execution petition, both the decree holder and judgment debtor are there and the case is fixed for evidence of decree holder. An issue has also been framed as to whether judgment debtor had caused willful disobedience of judgment and decree and now it is for the decree holder to prove that the judgment debtor had caused willful disobedience by carving out the passage from the suit land or not. The purpose of appointment of Local Commissioner is not to create evidence by either party but the decree holder has to stand on his own legs and for proving breach of order, the evidence is to be considered.

Order 26 Rule 9 CPC reads as under: -

“Commission to make local investigations. - In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any meson

profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.”

No doubt, as per said provision, the Court has ample power to appoint Local Commissioner to make local investigation, in case, the same is necessary for just decision of the case. However, the object of local investigation is not to collect the evidence on behalf of either party but the purpose is to obtain such evidence, which from its peculiar nature, can only be had on spot with a view to elucidate any point which is left doubtful on evidence produced before the Court.

In the present case, the petitioner has moved application for appointment of Local Commissioner to verify the factum of possession over the land in dispute and the passage, which has been carved out by the other side. The purpose of moving application for appointment of Local Commissioner is to collect the evidence qua to possession of the parties. The provisions of Order 26 Rule 9 CPC cannot be used for collecting evidence. The parties are required to lead their evidence to establish their possession over the land in dispute. Moreover, the onus is on decree-holder to prove that JD has caused willful disobedience of the judgment and decree.

In ***Pritam Singh and another v. Sunder Lal and others, 1990 (2) PLR 191***, a Division Bench of this Court by relying upon the decision of this Court rendered in ***Harvinder Kaur v. Godha Ram, ILR 1979(1) Punjab and Haryana 147*** has observed that no revision would lie against

an order passed under Order 26 Rule 9 of the Code.

This Court in subsequent judgment rendered in ***Sumer Chand Jain vs Vishnu Bhagwan Mangla 2006(2) RCR (Civil) 445*** by placing reliance upon Harvinder Kaur's case (supra) and Pritam Singh's case (supra) observed as under :-

*“ In two Division Bench decisions of this Court in **Smt. Harvinder Kaur and another v. Godha Ram and another AIR 1979 Punjab and Haryana 76** and **Pritam Singh v. Sunder Lal 1991(1) RRR 356**, it has been held that the order refusing to appoint the Local Commissioner under Order 26 Rule 9 C.P.C is not revisable under Section 115 C.P.C., therefore, such an order should not be interfered now under Article 227 of the Constitution of India. In this regard, in **Hari Om v. Minish Kumar (2005-2) PLR 690**, it was observed by this Court that if a revision petition under Section 115 C.P.C. against the impugned order is not maintainable, then by mere change in the head note of the petition, the substance cannot be replaced to wriggle out from the rigors of law which is well settled that no revision petition under Section 115 C.P.C is maintainable.”*

On the same point are the decisions of this Court in subsequent judgments rendered in ***Bant Singh alias Balwant Singh and another v. Raghubir Singh and others 2008(4) RCR (Civil) 260; 2008(2) RCR (Rent)***

297 and *Rajiv Kumar Batra v. Kashmiri Lal Sika 2010(6) RCR (Civil) 37* in which also it has been held that revision petition either under Article 227 of the Constitution of India or under Section 115 of the Code is not maintainable against an order dismissing application for appointment of Local Commissioner.

In view of the facts as mentioned above, it is clear that well reasoned order has been passed by the Executing Court and it cannot be said that there is any necessity to appoint Local Commissioner as otherwise also no grave injustice is going to be caused

Accordingly, no interference is required in the impugned order and as such, the present revision petition being devoid of any merit is hereby dismissed.

09.02.2017
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(DAYA CHAUDHARY)
JUDGE

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