

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

Civil Revision No.2258 of 2018.

Decided on:-April 05, 2018.

Jasbir Singh.

.....Petitioner.

Versus

Ranjit Kaur.

.....Respondent.

**CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.**

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Present:- Mr. Rohit Ahuja, Advocate  
for the petitioner.

**HARI PAL VERMA, J. (Oral)**

The petitioner has filed the present civil revision under Article 226/227 of the Constitution of India for setting aside the order dated 07.02.2018 (Annexure P-5) passed by learned Civil Judge (Junior Division), Kapurthala, whereby the application filed by the petitioner-defendant for appointment of Local Commissioner in order to demarcate the suit property i.e. Khasra No.265 (3-16) and to report about the existing position of the suit property, was dismissed.

Briefly stated, the respondent-plaintiff has filed a suit for permanent injunction restraining the defendant (petitioner herein), his agents, servants etc. from closing/amalgamating the passage, as detailed in the plaint. While the suit was pending, the petitioner-defendant has filed the aforesaid application, which was dismissed by learned civil Court vide impugned order dated 07.02.2018.

Learned counsel for the petitioner has argued that the civil Court has dismissed the application for appointment of Local Commissioner so as to demarcate the suit property in an arbitrary manner. The petitioner has filed the application for demarcation of passage in Khasra No.265 (3-16) as the controversy between the parties to the suit can be resolved by getting the land demarcated from the revenue official which will further go to the root of the dispute.

He has further argued that appointment of Local Commissioner is governed with the provisions of Order XXVI Rule 9 CPC and has relied upon *2015(9) RCR (Civil) 590* titled as ***Banarasi Das Versus Sardha Ram and others*** and *1998(3) ICC 277* titled as ***Gurdial Singh and others Versus Municipal Committee, Morinda*** to support his contention that when there is no dispute as regard the existence of passage, but the dispute is regarding which party has made the encroachment, a Local Commissioner should have been appointed and the civil Court should allow the application for appointment of Local Commissioner.

I have heard learned counsel for the petitioner and perused the impugned order.

Admittedly, the respondent-plaintiff has filed a suit for permanent injunction restraining the petitioner-defendant from closing/ amalgamating the passage. The existence of passage in Khasra No.265 (3-16) is not in dispute. The question which the civil Court is to decide is as to who has made encroachment on the said passage. This controversy can always be resolved between both the parties by leading their respective evidence. The

Local Commissioner cannot be appointed to collect evidence and this Court finds that the application seeking appointment of Local Commissioner in the present form is nothing but an attempt to collect evidence. In ***Ganpat Versus Satvir and others 2013(19) RCR (Civil) 46***, this Court has dealt with more or less similar issue and has held that the revision petition under Article 227 of the Constitution of India is not maintainable against the order of dismissing the application for appointment of Local Commissioner. Thus, this Court finds that no inference is warranted in the impugned order dated 07.02.2018 passed by the civil Court by invoking the revisional jurisdiction of this Court.

Accordingly, the impugned order dated 07.02.2018 passed by the civil Court is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

**April 05, 2018**  
Yag Dutt

**(HARI PAL VERMA)**  
**JUDGE**

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|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether Reportable:        | No  |