

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3148 of 2018
Date of Decision-22.05.2018

Krishan Lal ... Petitioner
Versus
Tarlochan Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harvinder Pal Singh Ghuman, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 10.04.2018 passed by Additional Civil Judge, Senior Division, Nabha, whereby the application filed by the petitioner under Order 26 Rule 9 read with Section 151 CPC was dismissed.

[2]. Petitioner/plaintiff filed a suit for permanent injunction, restraining the defendant from interfering in his peaceful possession and also dispossessing him from the house constructed in the land measuring 173 sq. yards being 3/8th share out of the land as shown in the plaint.

[3]. Plaintiff claimed himself to be in exclusive possession of the suit property whereupon he has constructed a house with boundary wall and a gate. In order to protect his possession, the plaintiff wanted to get a Local Commissioner appointed, who will endorse the factum of possession of the plaintiff. The

appointment of Local Commissioner was claimed to be essential for just decision of the case.

[4]. The prayer was declined by the trial Court on the ground that the plaintiff wanted to collect evidence with the process of the Court.

[5]. As per *jamabandi* for the year 2010-11 of village Allohran, plaintiff and defendant are shown to be co-sharers in disputed khasra number along with one Malkit Kaur. Plaintiff has claimed injunction on the basis of his alleged exclusive possession, for which appointment of Local Commissioner was claimed in the suit.

[6]. Learned counsel for the petitioner relied upon **Prabhu Chawla Vs. State of Rajasthan and another, 2016(4) RCR (Criminal) 270** to contend that the Court has inherent powers to appoint Local Commissioner and to make such orders as may be necessary to give effect to the provision of the Code and also to prevent abuse of the process of law and to secure the ends of justice.

[7]. Perusal of the aforesaid judgment would show that the case pertains to the powers under Section 482 Cr.P.C viz-a-viz the remedy of revision. There cannot be any dispute with regard to inherent powers under Section 482 Cr.P.C, but in the case of like nature, the Court has to see whether such relief can be

granted to the petitioner in view of facts and circumstances of the present case.

[8]. It is a settled position that no party can be allowed to take recourse to the process of the Court for collecting evidence. The order rejecting prayer for appointment of 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, Pritam Singh and another Vs. Sunder Lal and others, 1990 PLJ 418, Sumer Chand Jain Vs. Vishnu Bhagwan Mangla, 2006(2) RCR (Civil) 445, Hari Om Vs. Minish Kumar, 2005(2) PLR 690, Balbir Kaur and others Vs. Pushpa Widge and others, 2006(2) RCR (Civil) 318, Rajiv Kumar Batra Vs. Kashmiri Lal Sika, 2010(6) RCR (Civil) 37 and Rambir Singh Vs. Gram Panchayat, Narhera and others, 2012(1) PLR 429.**

[9]. The Court while interpreting the aforesaid precedents held that no right of the either party is adjudicated by such order for the purpose of the suit and therefore, such order is not revisable. Refusal to appoint Local Commissioner is nothing to do with the rights of the parties. It is squarely covered under the discretion of the Court and in case, such discretion is refused, no right of the party is prejudiced, therefore, revision against such an

order is incompetent. By mere change in the headnote of the petition in the context of Section 115 CPC and Article 227 of the Constitution of India, the subject matter cannot be allowed to be wriggled out from the rigor of the law, which is otherwise well settled in view of consistent view of precedents on the subject matter.

[10]. At this stage of the suit, particularly when the parties are shown to be co-sharers, this Court cannot comment upon nature of relief which would be granted to the plaintiff in view of jointness of the property and in the absence of any partition by metes and bounds. Prayer for appointment of Local Commissioner cannot be allowed in the instant petition to collect evidence for any party. Plaintiff has to prove his exclusive possession on the basis of his substantive evidence.

[11]. The facts and circumstances of the present case are such that the Court cannot be instrumental in allowing one of the party to use process of the Court in adopting his exclusive possession, particularly when the defendant has denied such a claim of the plaintiff. Parties are co-shares in the suit property. The fate of the suit would be dependent upon the evidence to be led by the parties in the context of exclusive possession on behalf of the plaintiff and denial to the same by the defendant.

[12]. I am of the considered opinion that no indulgence can be granted in favour of either of the party in the context of

appointment of Local Commissioner for collecting evidence. The discretion exercised by the trial Court vide impugned order dated 10.04.2018 cannot be assailed in the present revision petition. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

22.05.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No