

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

CR No.3652 of 2018

Date of Decision: 29.05.2018

Hamja Ali and others

.....Petitioners

Vs

Salam Din and others

.....Respondents

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

Present: Mr. Dushyant Sarvesh, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 03.02.2018 passed by Civil Judge, Junior Division, Malerkotla, whereby application for appointment of Local Commissioner to ascertain the actual and factual position of the suit land was dismissed.

[2]. A suit for permanent/prohibitory injunction was filed by the plaintiffs/respondents, restraining the defendants/petitioners from dispossessing the plaintiffs/respondents from the land in question.

[3]. Defendants/petitioners filed an application for appointment of Local Commissioner on the ground that the suit land is joint amongst the co-sharers, therefore, revenue official be appointed so that controversy between the parties may be resolved.

[4]. Plaintiffs refuted the claim of the defendants and claimed that the suit land is not joint amongst the co-sharers and further claimed that revenue record is already on record, showing that the plaintiffs are exclusive owner in possession of the suit property. Plaintiff further submitted that as per revenue record, they are in exclusive possession of the suit land.

[5]. Civil Judge (Junior Division), Malerkotla vide order dated 03.02.2018 dismissed the application.

[6]. At this stage of litigation, Local Commissioner cannot be asked to collect evidence in favour of either of the parties. Learned counsel for the petitioners relied upon **Gurdial Singh and others Vs. Municipal Committee, Morinda 1998(3) ICC 277** and contended that the factual position of the site viz-a-viz construction/structure could be obtained by the Local Commissioner. The aforesaid judgment would not lead any such conclusion on the basis of facts involved in the present case. The claim with regard to the property being joint and plaintiffs and defendants being co-sharers has been refuted by the plaintiffs. The plea of exclusive possession has to be demonstrated with reference to evidence on record. No such concept of co-sharership was involved in the aforesaid case.

[7]. 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, 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. Even by mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. Such an order cannot be interfered with even under Article 227 of the Constitution of India.

[8]. For the reasons recorded hereinabove, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

May 29, 2018.

Prince

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No