

259

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

**Civil Revision No.403 of 2018
Date of Decision: 18.09.2018**

Smt. Rammurti

.....Petitioner

Vs

Tilak Atri and another

....Respondents

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

Present: Mr. M.R. Sharma, Advocate
for the petitioner.

Mr. Punit Malik, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the orders dated 27.02.2017 and 17.08.2017 passed by the Civil Judge (Jr. Divn.) Gurugram, whereby the applications for additional evidence and appointment of Local Commissioner were dismissed.

[2]. At the time of issuance of notice of motion on 29.01.2018, following order was passed by the Co-ordinate Bench of this Court:-

“This is revision petition against two orders passed by Civil Judge (Senior Division), Gurugram on the applications of petitioner-plaintiff. Vide order dated 27.02.2017, the application filed by the petitioner for additional evidence was dismissed being vague as the

petitioner had not annexed copy of order, he wanted to tender in additional evidence. The relevant observation of learned civil Judge are reproduced as follows:-

“However, no such document was annexed alongwith the present application, for the consideration of this court. Also the alleged summoning order has not been annexed with the application from (sic for) the perusal of this court in order to ascertain the relevancy and importance of the said summoning order. Further, it has not been specifically stated in the application as to what additional evidence plaintiff wants to give by way of present application. Hence, present application for additional evidence is clearly vague and has been filed in order to lead oral evidence after the closing of the oral evidence by the learned counsel for the plaintiff. Further, it is to be noted that vide order dated 23.03.2016 plaintiff was granted an opportunity to lead documentary evidence. Hence, the plaintiff still can file the documentary evidence and if in the opinion of the plaintiff the said summoning order is vital to the just decision of the case, then, plaintiff still has the option to tender the certified copy of the said summoning order in her documentary evidence. Hence, present application stands dismissed being meritless with the aforesaid reasoning.”

The petitioner had sought permission to lead additional evidence vide application dated 20.09.2016. Though the prayer has been made in the application for permission to lead additional evidence but in neither of the para or even in the head note, the petitioner had explained as to what additional evidence he intends to lead. Learned

Civil Judge has rightly declined the application with the observation that same is vague. However, the revision petitioner instead of filing fresh application after rectifying the defects as mentioned in the impugned order has preferred this revision petition, which has no merits.

Dismissed to this extent.

An application was filed by the petitioner for appointment of local commissioner to find out the factual position at the spot about the area of the suit property. It is submitted that dispute between the parties is about the area of the suit property, which the plaintiff is alleging to be 103 square yards and defendant as 70 square yards.

Learned Civil Judge declined the application on the ground that local commissioner cannot be appointed to collect the evidence for any party.

Learned counsel for the revision petitioner submits that it was not a question of collecting evidence but the request was made to ascertain factual position at the spot.

*Notice of motion to respondent for 14.02.2018.
Dasti as well.*

Till then, the trial Court will proceed further with the matter but will not pronounce the final order.”

[3]. Perusal of the aforesaid order would show that notice of motion was issued only for consideration of prayer for appointment of Local Commissioner to find out the factual position at the spot in respect of the suit property.

[4]. I have considered the submissions made by learned counsel for the parties.

[5]. It is a settled principle of law that the process of the

Court cannot be utilized to collect evidence for a party. In view of law laid down in **Harvinder Kaur and another vs. Godha Ram and another, 1979 PLJ 562 DB; M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531** and **Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418**, the order rejecting the prayer for appointment of Local Commissioner is not revisable. The order refusing to appoint the Local Commissioner does not decide any issue on merits. No right of the parties is adjudicated by such order for the purposes of deciding the merit of the case. Such an order is held to be not revisable.

[6]. Even the Hon'ble Apex Court in **Rajinder & Co. vs. Union of India and others, 2003(1) R.C.R. (Civil) 755** has held that the order accepting the prayer for appointment of Local Commissioner is also not revisable as the same would not decide any issue between the parties on merits. The High Court cannot interfere with such order appointing the Local Commissioner for inspection of the site. The said view was followed by this Court in **Harpal Singh vs. Harmohinder Singh and others, 2013(2) R.C.R. (Civil) 892.**

[7]. Even this Court in **CR No.4314 of 2017** titled '**Pritam Singh vs. Bahadur Singh and others**, decided on 31.07.2017

has taken the same view.

[8]. For the reasons recorded hereinabove, the prayer for appointment of Local Commissioner cannot be entertained and the order rejecting the same also cannot be interfered with in the revisional jurisdiction of this Court under Article 227 of the Constitution of India. This revision petition is accordingly dismissed.

September 18, 2018

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No