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

Civil Revision No.4859 of 2018

Date of Decision : 01.08.2018

Ram Partap

.....Petitioner

Versus

Gulpinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Samir Rathaur, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioner.

B.S. WALIA, J. (Oral)

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting aside order dated 01.05.2018 (Annexure P1), passed by the learned Civil Judge (Junior Division), Kaithal (hereinafter referred to as 'the learned Civil Judge') dismissing the application of the petitioner-plaintiff for appointment of Local Commissioner.

2. Brief facts of the case leading to the filing of the revision petition are that a civil suit was filed by the petitioner-plaintiff for permanent and mandatory injunction for restraining the respondents from raising any sort of construction, throwing any garbage etc. and from altering the joint character or from doing any act inconsistent with the rights of the plaintiff in the suit property. When the case was fixed at the stage of rebuttal evidence, an application was moved by the petitioner/plaintiff for

appointment of Local Commissioner for demarcation of the land in dispute. The learned Civil Judge dismissed the application on the ground that the case was at the stage of rebuttal evidence and arguments, therefore, Local Commissioner could not be appointed to collect evidence on behalf of either of the parties.

3. Learned counsel contended that the respondents-defendants in their written statement had specifically denied that the suit property was not part and parcel of Rect. No.97, but had not disclosed as to in which Rect. number the property in dispute was falling, whereas defendant No.6 and legal heir of defendant No.5 who appeared as DW2 and DW1 respectively, had stated that the property in dispute was part and parcel of Rect. No.254, therefore, it was essential that demarcation of the property be carried out by allowing the application for appointment of Local Commissioner to enable determination as to whether the suit property was part and parcel of Rect. No.97 or Rect. No.254.

4. I have heard learned counsel. In Harvinder Kaur and another vs. Godha Ram and another 1979 AIR (Punjab) 76, a Division Bench of this Court has held that an order passed during the course of a suit or proceedings is revisable only when it determines and adjudicates some right or obligation of the parties in controversy whereas another Division Bench of this Court in Pritam Singh and another vs. Sunder Lal and others 1999 PLJ 418, has held that an order refusing to appoint a Local Commissioner does not decide any issue nor adjudicates any rights of the parties for the purpose of the suit, therefore is not revisable. Even otherwise, it is well settled that a Local Commissioner cannot be appointed to gather evidence on behalf of either of the parties. A Coordinate Bench of this Court in

Banarsi Dass vs. Sunita Rani alis Sarita Rani and another 2017 (2) RCR (Civil) 274 has held that a Local Commissioner cannot be appointed at the behest of either party to the suit for the purpose of collection of evidence, and that refusal of prayer for appointment of a Local Commissioner does not decide any rights inter se the parties.

5. In the light of the position as noted above, as also in view of the fact that an order declining to appoint Local Commissioner does not decide any rights of the parties nor can a Local Commissioner be appointed for collecting evidence on behalf of either of the parties, I do not find any infirmity with the order passed by the learned Civil Judge. Accordingly, the revision petition being bereft of merit is dismissed in limine.

August 01, 2018
rajesh/sandeep

(B.S.Walia)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No