

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

**CR No.6013 of 2018(O&M)
Date of Decision: 24.09.2018**

Ashwani Kumar

.....Petitioner

Versus

Jaswinder Singh and others

.....Respondents

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

Present: Mr. L.S. Mann, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has made challenge to the order dated 03.07.2018 passed by Civil Judge (Junior Division), Bathinda, whereby application filed by the petitioner for appointment of Local Commissioner was dismissed.

[2]. Application was filed by the plaintiff in a suit for possession and permanent injunction for appointment of Local Commissioner preferably Draftsman or Architect who may inspect the spot, take measurements along with photographs and give report regarding place of existence of property and location of streets No.5/5 to 5/10 situated in Baba Farid Nagar, Bathinda. Plaintiff asserted that the aforesaid course would be necessary to enable the Court to adjudicate the dispute in an

effective manner. The rights of the defendants will not be prejudiced in any manner as they would be having right to rebut the report of Local Commissioner in their evidence.

[3]. Vide order dated 03.07.2018, the prayer was rejected by the trial Court on the premise that the plaintiff cannot be allowed to take recourse to the process of the Court for collecting evidence.

[4]. Learned counsel for the petitioner relied upon **SLP No.35271 of 2016** titled **Chattar Singh Vs. Bhupinder Singh** decided on 05.12.2017 by the Hon'ble Apex Court, **Om Parkash Vs. Kishan Chand and others, 1996(3) RCR (Civil) 737** and **Anil Kamalakar Shirodhkar Vs. Dudhappa Santu Patil and another, 2002(3) RCR (Civil) 681** and contended that Local Commissioner can be appointed in the present set of circumstances.

[5]. I have considered the submission made by learned counsel for the petitioner and found the contention to be wholly untenable. In **Chattar Singh's case (supra)**, the controversy was that the High Court has observed that it would have been appropriate to examine Field Kanungo to prove report of demarcation before the trial Court. Trial Court decided the case against the plaintiff because the plaintiff did not examine the Field Kanungo to prove his report. In the aforesaid

circumstances, the High Court observed that due to lapse on the part of the counsel, the plaintiff could not be made to suffer and therefore, report of Kanungo ought to have been proved in terms of execution by examining the Kanungo in evidence. The judgment of the High Court was reversed by the Hon'ble Apex Court on the premise that the High Court while decreeing the suit has virtually proved the execution of report of Kanungo. The course available before the High Court was to remand the case for additional evidence instead of decreeing the suit by allowing the Kanungo to prove his report. In the said case, the report of Kanungo was already on record. Trial Court dismissed the suit on the ground of non-proving the execution of said report by examination of Kanungo.

[6]. In the light of aforesaid fact, the High Court allowed examination of Kanungo and the Hon'ble Apex Court has set aside the order of the High Court on the premise that the course available before the High Court was to remand the case for additional evidence. No such proposition in respect of appointment of Local Commissioner for collecting evidence for one of the party was involved in the said case. Therefore, the aforesaid case is distinguishable on facts and does not apply to the facts of the present case.

[7]. **Om Parkash's case (supra)** and **Anil Kamalakar**

Shirodhkar's case (supra) were decided on the basis of their own facts. There is no dispute with regard to the proposition of law. If the order decides substantial right of a party, the revision is maintainable against such order.

[8]. In **Harvinder Kaur and another Vs. Godha Ram and another, 1979 PLJ 562 (DB)**, Division bench of this Court has held that the order refusing to appoint the Local Commissioner is not maintainable. Again in **Pritam Singh and another Vs. Sunder Lal and others, 1990 PLJ 418**, the aforesaid view was reiterated. The order declining to appoint Local Commissioner in view of facts and circumstances of the present case does not decide any substantial right of the plaintiff. Plaintiff has a right to lead his substantive evidence.

[9]. In **Sumer Chand Jain Vs. Vishnu Bhagwan Mangla, 2006(2) RCR (Civil) 445**, this Court also interpreted the scope of Article 227 of the Constitution of India in the context of interference in the order declining to appoint Local Commissioner. This Court held that by mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. The aforesaid view was again reiterated in **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.**

[10]. This Court has also decided **CR No.6108 of 2018** titled **Ashwani Kumar Vs. Amarjit Kaur and others** in respect of same locality.

[11]. In view of facts and circumstances of the present case, I find no error of jurisdiction in the impugned order dated 03.07.2018 passed by Civil Judge (Junior Division), Bathinda. This revision petition is accordingly dismissed.

September 24, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**