

127

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

**Civil Revision No.6108 of 2018
Date of Decision:12.09.2018**

Ashwani Kumar

.....Petitioner

Vs

Amarjit Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Vaibhav Sehgal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 03.07.2018 passed by the Civil Judge (Jr. Divn.) Bathinda vide which application for appointment of Local Commissioner was dismissed.

[2]. Brief facts of the case are that the plaintiff filed a suit for possession of a plot having defined dimensions as shown in the headnote of the plaint. Permanent injunction was also sought for restraining the defendant No.1 from alienating any portion of the aforesaid plot or creating any encumbrance over the suit property. It was pleaded by the plaintiff that the plot in question was illegally encroached by the defendants.

[3]. Defendants contested the suit by filing written statement, wherein factum of purchase of plot measuring 200 sq. yards at the instance of defendants No.2 and 3 from defendant No.4 vide sale deed dated 14.08.1995 was admitted and defendants No.2 and 3 further sold the same to defendant No.1 vide sale deed dated 09.06.2000. Defendants also alleged that the plot in question was situated in the street No.5/6 and was also known street No.5/7 from the other side.

[4]. In the application for appointment of Local Commissioner, it was submitted by the plaintiff that the plea taken by the defendants in the written statement was patently false and fraudulent. The streets were different and distinct and carry distinct numbers from street No.5/5 to 5/10. The aforesaid fact can be established by way of inspection of the street by some competent person, who may undertake inspection of the spot and prepare a site plan of all the streets including House Nos.75 and 76. In order to ascertain fraud played by the defendants and to ascertain true picture at the spot, inspection of the site by a Local Commissioner and Photographer was claimed to be necessary for helping the Court to evaluate the controversy in an effective manner.

[5]. The trial Court vide the impugned order declined the prayer on the ground that the process of the Court cannot be

utilized to collect evidence by the plaintiff. Plaintiff can lead his substantive evidence in order to establish his claim over the suit property.

[6]. Learned counsel for the petitioner by relying upon **Deepak Narula vs. Shri Satruhan Dwivedi and others, 2013(33) R.C.R. (Civil) 255; CR No.5905 of 2013 tilted 'Harjit Singh vs. Pargat Singh'** decided on 09.02.2016; **CR No.8818 of 2015 titled 'Krishan Lal vs. Avinash Chand @ Avinash Kumar and another'**, decided on 25.05.2016; **CR No.6026 of 2015 titled 'Nirmal Kumar vs. Smt. Arwinder Kaur and others'** decided on 26.11.2015 and **CR No.6955 of 2011 titled 'Akal Educational Society vs. Madan Lal'** decided on 14.02.2012 contended that Local Commissioner can be appointed to identify the land with reference to the nomenclature of the land.

[7]. I have considered the submissions made by learned counsel for the petitioner.

[8]. Perusal of **Deepak Narula's** case (supra) would show that the same revolved around its own facts, where there was difference in *khasra* number mentioned in the sale deed as well as in the plaint. The property was required to be identified by boundaries. Even the Court has observed that an occasion

arises in the particular case, where the Court ought to have appointed the Local Commissioner to identify the property with reference to two *khasra* numbers. The identification by such mechanism would have decided the substantial rights of the parties in the said case.

[9]. In **Harjit Singh**'s case (supra), the controversy was in respect of the evidence which was led by the parties and there was an ambiguity in the demarcation report already on record. Objections were raised against the demarcation report on the ground that the same was carried out at the back of the party, therefore, in order to do complete justice, the indulgence was granted. Existence of earlier demarcation report and filing of objections and decision in pursuance thereto would decide a substantial right of a party.

[10]. Similarly in other cited cases, more or less the same position exists. The basic principle for interference in the matters of appointment of Local Commissioner is that the Court can grant indulgence, if the order accepting or refusing to appoint the Local Commissioner has decided a substantial right of a party. Where no substantial right of a party is decided by such order, revision against such order is not maintainable.

[11]. In **Harvinder Kaur and another vs. Godha Ram and**

another, 1979 PLJ 562 DB, this Court has held that revision against the order refusing to appoint the Local Commissioner is not maintainable. It was concluded that no revision would lie against the order passed under Order 26 Rule 9 CPC. The view expressed by the High Court in **M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531** was upheld. Similar view was taken in **Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418**.

[12]. The order refusing to appoint Local Commissioner has not decided any issue on merits in the present case. No right of the petitioner has been adjudicated by the impugned order. Petitioner would be will within his right to lead substantive evidence during trial, therefore, such order is held to be not revisable. Refusal to appoint Local Commissioner has nothing to do with the rights of the petitioner. Petitioner can lead his substantive evidence for which discretion of the Court cannot be utilized to collect evidence for himself. In case such a discretion is refused, no right flows from such refusal to assail the same in the High Court.

[13]. In **Sumer Chand Jain vs. Vishnu Bhagwan Mangla, 2006(2) R.C.R. (Civil) 445**, the Court interpreted on the basis of earlier precedents that even revision petition under Article 227

of the Constitution of India is not maintainable against the order refusing to appoint Local Commissioner. By mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. The view expressed in **Hari Om vs. Minish Kumar, 2005(2) PLR 690** was reiterated that by mere change in the headnote of the petition, the subject matter cannot be allowed to be wriggled out from the rigor of law.

[14]. The aforesaid view was again reiterated in **Balbir Kaur and others vs. Pushpa Widge and others, 2006(2) R.C.R.(Civil) 318; Rajiv Kumar Batra vs. Kashmiri Lal Sika, 2010(6) R.C.R. (Civil) 37 and Rambir Singh vs. Gram Panchayat, Narhera and others, 2012(1) PLR 429.**

[15]. Even the Hon'ble Apex Court in **Rajinder & Co. vs. Union of India and others, 2003(1) R.C.R. (Civil) 755** held that the question whether the report of the Local Commissioner is finally acceptable or not would be decided by the concerned Court *de hors* the order. The High Court cannot interfere with the order of the trial Court appointing the Local Commissioner for inspection of the site.

[16]. From the aforesaid interpretation, it can be noticed that the supervisory jurisdiction of the High Court in terms of Article 227 of the Constitution of India, though wide enough, but the

same can only be exercised, if any substantive right of a party is decided by the impugned order. Against the appointment or rejection of the Local Commissioner, the party can lead evidence. In case of acceptance of the prayer for appointment of Local Commissioner, the party can file objection to the report of Local Commissioner. In case refusal to appoint Local Commissioner, the party is still at liberty to adopt other mechanism to prove his grievance. The aforesaid view was again endorsed by this Court in **Harpal Singh vs. Harmohinder Singh and others, 2013(2) R.C.R. (Civil) 892.**

[17]. Even while rejecting the prayer for appointment of Local Commissioner, the trial Court has relied upon **Tatvadarsha Bandhu Pvt. Ltd., vs. Municipal Corporation, 2015(2) PLJ 349,** wherein it was held that the appointment of Local Commissioner cannot be made for collecting evidence for a party and supporting its cause. The application was dismissed.

[18]. Even this Court while deciding **CR No.7286 of 2016 titled 'Kishori Lal vs. Suresh Kumar and others'**, decided on 02.08.2018 and **CR No.4314 of 2017 titled 'Pritam Singh vs. Bahadur Singh and others'**, decided on 31.07.2017 has taken the same view.

[19]. For the reasons recorded hereinabove, I find that there

is no error of jurisdiction in the impugned order dated 03.07.2018 passed by the Civil Judge (Jr. Divn.) Bathinda. Consequently, no indulgence can be granted in the present revision petition and the same is accordingly dismissed.

September 12, 2018

**(RAJ MOHAN SINGH)
JUDGE**

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No