121

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7232 of 2018
Date of Decision:25.10.2018

Ram Kishan and others **.....Petitioners**

Vs

Maan Singh and others **....Respondents**

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

Present: Mr. Akshay Kumar Goel, Advocate
for the petitioners.

****

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 15.10.2018 passed by the Addl. Civil Judge (Sr. Divn.) Loharu vide which application for appointment of Local Commissioner was dismissed.

[2]. Brief facts of the case are that the plaintiffs filed a suit for declaration of title in respect of land having defined dimensions as shown in the head note of the plaint and in the alternative relief for possession against the defendants was sought. Defendants contested the suit by filing written statement, wherein the sale deed in favour of Rama Nand and the suit property comprised in Khasra nos.363/1 and 364 etc. have been denied. Vide order dated 06.02.2015, the Civil Court restrained defendants no.1 to 3 from raising any construction

MOHMED ATIK
2018.10.30 14:56
I attest to the accuracy and
authenticity of this document

over the suit land. Despite *ad interim* injunction the defendants continued raising construction over the suit property.

[3]. On 24.02.2015, the plaintiffs filed an application for appointment of local commissioner to ascertain the present state of affairs over the land in dispute which was allowed and a Local Commissioner was appointed to furnish report regarding the prevailing situation. The report was submitted by the local commissioner on 02.03.2015 which depicted that the raising of construction of 10-10 shops facing each other having a street in between.

[4]. On 06.07.2018 the plaintiffs again filed an application for appointment of local commissioner under Order 26 Rule 9 and 10 CPC to elucidate the existing position through the Field Kanungo with a view to ascertain factum of construction whether the same was in exclusion of *Khasra* Nos.363/1 and 364 or otherwise. Though no khasra numbers were given. The aforesaid application was dismissed vide the impugned order dated 15.10.2018 on the ground that the Local commissioner cannot be appointed to collect the evidence in favour of intending party.

[5]. Learned counsel for the petitioners has relied upon the decision rendered in ***Leela Ram vs Omkar 2018 (2) Law***

MOHMED ATIK
2018.10.30 14:56
I attest to the accuracy and
authenticity of this document

Herald 1023 (P&H), wherein the application filed for the second time for the appointment of local commissioner was allowed by the High Court. In the aforecited case, earlier an application was filed for the appointment of Local Commissioner which was allowed in the context of ascertaining the factum of alleged construction being raised by the defendant. Second application was filed on the ground that in the process of construction, the defendant had encroached upon some portion of the suit property. The High Court allowed the application by holding that report of the Local Commissioner on earlier application only pertained to ongoing construction and there was already a prayer in the suit with regard to the removal of the construction, if found to have been encroached.

[6]. I have considered the submissions made by learned counsel for the petitioners.

[7]. Perusal of ***Leela Ram's case*** (supra) would show that the same revolved around its own facts, where an occasion arose in respect of ascertaining the factum of alleged construction being raised by the defendant, therefore, the Local Commissioner was appointed by the trial Court, whereas in the second application, again a necessity arose for appointment of the Local Commissioner as there were allegations of encroachment upon some portion of the Khasra No.140. The

MOHMED ATIK
2018.10.30 14:56
I attest to the accuracy and
authenticity of this document

case was depending upon the discretion exercised by the trial Court. However, the trial Court dismissed the second application for appointment of the Local Commissioner. Aggrieved against the aforesaid refusal by the trial Court, the plaintiff approached the High Court and the High Court allowed revision petition whereby application for appointment of Local Commissioner was allowed on the ground that there was already a prayer in the suit for removal of the construction, if found to have encroached. However, in the present case, no such ground for appointment of the Local Commissioner 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.

[8]. 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***

MOHMED ATIK
2018.10.30 14:56
I attest to the accuracy and
authenticity of this document

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***.

[9]. No substantial right of the petitioners has been decided by the impugned order. Petitioners would be will within their right to lead substantive evidence during trial. Refusal to appoint Local Commissioner has nothing to do with the rights of the petitioners. Petitioners can lead their substantive evidence for which discretion of the Court cannot be utilized to collect evidence for themselves. In case such a discretion is refused, no right flows from such refusal to assail the same in the High Court.

[10]. 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.

MOHMED ATIK
2018.10.30 14:56
I attest to the accuracy and
authenticity of this document

[11]. 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***.

[12]. 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.

[13]. 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

MOHMED ATIK
2018.10.30 14:56
I attest to the accuracy and
authenticity of this document

again endorsed by this Court in ***Harpal Singh vs. Harmohinder Singh and others, 2013(2) R.C.R. (Civil) 892***.

[14]. 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.

[15]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned dated 15.10.2018 passed by the Addl. Civil Judge (Sr. Divn.) Loharu. Consequently, no indulgence can be granted in the present revision petition and the same is accordingly dismissed.

October 25, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

MOHMED ATIK
2018.10.30 14:56
I attest to the accuracy and
authenticity of this document