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

**Civil Revision No.7349 of 2018
Date of Decision: 29.10.2018**

Paramjit Singh

.....Petitioner

Vs

Kanta Devi and another

....Respondents

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

Present: Mr. Sarju Puri, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 24.09.2018 passed by the Addl. Civil Judge (Sr. Divn.) Garhshankar vide which application for appointment of Local Commissioner was dismissed.

[2]. Brief facts of the case are that the plaintiff filed a suit for permanent injunction for restraining the respondents/defendants from interfering into the lawful and peaceful possession of the plaintiff over the suit property as detailed in the head note of the plaint bearing *Khata* No.3411/3875, Khasra No.34/12/1/1/3/2.

[3]. The suit was contested by the defendants by way of filing written statement, wherein the suit property was denied to be constituted in the aforesaid Khasra No.34/12/1/1/3/2,

rather it was claimed that the suit property was situated in *Khasra* No.34/12/1/1/1 and 12/1/1/2.

[4]. Thereafter, an application was filed by the plaintiff for appointment of Local Commissioner to verify as to whether the suit property in dispute is a part of the *Khasra* No.34/12/1/1/3/2 by way of demarcation of the suit property in question.

[5]. The trial Court vide the impugned order declined the prayer on the ground that process of the Court cannot be utilized to collect evidence by the plaintiff.

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

[7]. Perusal of the impugned order would show that the trial Court while dismissing the application for appointment of Local Commissioner has noticed the conduct of the petitioner in the context of concluding his evidence. After filing of written statement by contesting defendant No.1 on 17.01.2015, replication was filed by the plaintiff on 24.02.2015. Thereafter issues were framed on 01.12.2015. Plaintiff availed 10 effective opportunities including last opportunity. Thereafter, additional opportunity and exceptional opportunity with costs and one more opportunity on statement of learned counsel were also granted. Learned counsel stated that he would conclude his

evidence on 26.09.2017. However, on 26.09.2017 plaintiff reluctantly stepped into witness box and tendered his affidavit by way of examination-in-chief, but did not bring remaining witnesses. Thereafter, petitioner availed number of effective opportunities including payment of costs, but none of the plaintiff's witness came forward to face the cross-examination. The conduct of petitioner in the context of pursuing the case at his own leisure and not completing the evidence till date inspite of availing effective opportunities was noticed. The effort of the petitioner for seeking appointment of Local Commissioner was termed as another endeavour to delay the case further.

[8]. Learned counsel for the petitioner relied upon Ram Prasad Mishra vs. Dinabandhu Patri and another, 2012(50) R.C.R. (Civil) 942 (Orissa); Pulipalpula Srinivas and others vs. Gangula Vasanta, 2010(33) R.C.R. (Civil) 815 and Leela Ram vs. Omkar, 2018(3) PLR 256 to contend that in respect of controversy regarding identification of the land, local investigation should be done at the earliest so that parties may go to trial with full preparedness. Issue of maintainability of revision petition was never the subject matter of aforesaid cases.

[9]. 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.**

[10]. No substantial right of the petitioner has been decided by the impugned order. Petitioner would be will within his right to lead substantive evidence during trial. 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 themselves. In case such a discretion is refused, no right flows from such refusal to assail the same in the High Court.

[11]. 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.

[12]. 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.**

[13]. 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.

[14]. 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.**

[15]. 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.

[16]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned dated 24.09.2018 passed by the Addl. Civil Judge (Sr. Divn.) Garhshankar. Consequently, no indulgence can be granted in the present revision petition and the same is accordingly dismissed.

October 29, 2018

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No