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

**Civil Revision No.7534 of 2018
Date of Decision:16.11.2018**

Manmohan Singh

.....Petitioner

Vs

Piara Singh and others

....Respondents

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

Present:Mr. Sunil Agnihotri, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 13.07.2018 passed by the Civil Judge (Jr. Divn.) Dasuya, vide which the application filed by the petitioner for appointment of Local Commissioner was dismissed.

[2]. Plaintiff filed a suit for mandatory injunction directing the defendants to remove illegal encroachment as shown in the site plan from a common passage. Plaintiff filed an application for appointment of Local Commissioner with a view to know the illegal encroachment made by the defendants over the passage in question. Prayer for appointment of Revenue Officer as Local Commissioner was sought for demarcation of the passage. The

plaintiff pleaded that due to wrong mentioning of dimensions in record viz.-a-viz. the record available in the consolidation proceedings, wrong dimensions were given subsequently in the *aks sijra*. The appointment of some revenue officer as Local Commissioner was sought to be ordered in order to conduct demarcation of the passage.

[3]. The prayer was declined by the trial Court on the premise that process of the Court cannot be invoked to collect evidence for the plaintiff. Plaintiff was required to lead his evidence in the affirmative so as to prove his case. In case of appointment of Local Commissioner from the Revenue Department, the application could have been given by the plaintiff before the competent officer and even in case of appointment of Local Commissioner by the Revenue Officer, the said Local Commissioner could have been examined by the plaintiff in his evidence in order to prove his report (if any) and such report would have been subject to legal criticism by the defendant. No such recourse has been adopted by the plaintiff. On the other hand process of the Court was sought to be invoked for appointment of Local Commission which was not legally permissible.

[4]. Learned counsel for the petitioner relied upon order dated 16.12.2003 passed in CR No.5339 of 2002 in support of

his submissions.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. Perusal of the aforesaid order would show that the legal position as held in **Harvinder Kaur and another vs. Godha Ram and another, 1979 PLJ 562 DB** was not considered, nor the same was relied by any of the parties before the Court. The aforesaid view was reiterated in subsequent judgments passed by the Courts. In the aforesaid judgment the ratio of **M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531** was upheld. Similar proposition was incorporated in case titled **Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418.**

[7]. Dismissal of application for appointment of Local Commissioner cannot be considered to be an order deciding any substantial right of the plaintiff. It is a settled principle of law that in case no substantial right of the plaintiff is decided by an order, revision petition is not maintainable against such order. Petitioner/plaintiff would be well within his right to lead substantive evidence to prove his case during trial. Refusal to appoint Local Commissioner has nothing to do with the right of

the plaintiff. Discretion of the Court cannot be utilized to collect evidence in this manner. In case such a discretion is refused, no right flows from such order.

[8]. In **Sumer Chand Jain vs. Vishnu Bhagwan Mangla, 2006(2) R.C.R. (Civil) 445** and **Hari Om vs. Minish Kumar, 2005(2) PLR 690; 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**, it was held that revision petition, even if filed under Article 227 of the Constitution of India is not maintainable against the order whereby appointment of Local Commissioner at the instance of a party is refused. By mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. Supervisory jurisdiction of the High Court in terms of Article 227 of the Constitution of India, even though is wide enough, but the same can only be exercised, if any substantive right of a party is decided by an order. The order of appointment or refusal to appoint a Local Commissioner would not give rise to any such proposition in law, which would be required to be settled under extra-ordinary jurisdiction of the High Court.

[9]. In **Rajinder & Co. vs. Union of India and others,**

2003(1) R.C.R. (Civil) 755, the Hon'ble Apex Court has held that the question whether report of 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 even in case of appointment of Local Commissioner. The aforesaid view was followed by the High Court in Harpal Singh vs. Harmohinder Singh and others, 2013(2) R.C.R. (Civil) 892 and even in 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.

[10]. For the reasons recorded hereinabove, the order dated 16.12.2003 passed in CR No.5339 of 2002 as relied upon by learned counsel for the petitioner is of no help to the petitioner. This revision petition is found to be being devoid of merits and the same is accordingly dismissed.

November 16, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No