

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

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CR No.7800 of 2017 (O & M)
Date of Decision:29.05.2018

Gurvinder Singh

...Petitioner

Versus

Pargat Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

ANIL KSHETARPAL, J.(Oral)

Order of dismissal of an application for appointment of Local Commissioner has been assailed in this revision petition filed under Article 227 of the Constitution of India. Learned trial Court while dismissing the application has recorded as under:-

“No ground is made out to appoint the local commissioner as prayed for. In the present case, main dispute is regarding that whether the wall between the plaintiff's and defendant's house is a common wall or not and the local commissioner cannot be appointed to collect evidence nor the court can assist a party to collect evidence. The parties themselves are required to produce evidence at their own and the court cannot assist a party to collect evidence. Moreover suit is at the threshold stage and burden of proof rests upon the

plaintiff to prove that wall is a common wall and is required to establish his plea by cogent and reliable evidence. Accordingly, no ground is made out to appoint the local commissioner. Hence, the application in hand is dismissed being devoid of any merit.”

Still further, two Division Benches of this Court have examined the issue of maintainability of revision petition against the order dismissing the application for appointment of Local Commissioner. Reference in this regard can be made to **Harvinder Kaur and another vs. Godha Ram and another**, 1979 PLJ 562 and **Pritam Singh vs. Sunder Lal**, 1991 (1) R.R.R. 356.

Learned counsel for the petitioner submitted that the aforesaid judgments are interpreting the provisions of Section 115 of the Code of Civil Procedure, whereas this revision petition has been filed under Article 227 of Constitution of India, hence he submits that under Article 227 of the Constitution of India, the jurisdiction of the High Court is vast and there is no embargo on the power of the Court to examine validity of the order passed by a Subordinate Court.

No doubt that Article 227 of the Constitution of India has been given very vast power to the High Court. However, such power is to be exercised carefully and sparingly. In every case, powers under Article 227 of the Constitution of India should not be exercised.

In the present case, learned trial Court has already held that the Court cannot be expected to collect evidence on behalf of the party. Party to

the aforesaid demarcation report.

In view thereof, there is no scope for interference.

Hence, the revision petition is dismissed.

29.05.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No