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

**Civil Revision No.7829 of 2018
Date of Decision:19.11.2018**

Baljit Singh Gill

.....Petitioner

Vs

Surjit Singh and another

....Respondents

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

Present:Mr. Pushpinder Kaushal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 09.08.2018 passed by the Civil Judge (Jr. Divn.) Moga, vide which the application filed by the petitioner for appointment of Local Commissioner was dismissed.

[2]. Plaintiff/petitioner filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the first floor of house as shown in red colour in the site plan. Restraint order was also sought against the defendants from making any obstruction in the peaceful use of common place of house in question as shown in green colour in the site plan.

[3]. By way of moving an application under Order 26 Rule 9 read with Section 151 CPC, plaintiff sought appointment of Local Commissioner on the ground that plaintiff is in possession of first floor of the property in dispute and had put his domestic articles therein. In order to ascertain the aforesaid fact, appointment of Local Commissioner was sought.

[4]. The aforesaid application was dismissed by the trial Court on the ground that the process of the Court cannot be utilized to collect evidence by the plaintiff.

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

[6]. In **Harvinder Kaur and another vs. Godha Ram and another, 1979 PLJ 562 DB; M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531** and **Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418** it was held that against the order refusing the appoint Local Commissioner revision is no maintainable. By way of rejecting the application under Order 26 Rule 9 CPC for appointment of Local Commissioner, no substantial right of the parties has been decided by the Court. Plaintiff can still lead his substantive evidence to prove his case before the trial Court. Process of the

Court cannot be utilized by the plaintiff to collect evidence for himself. No right flows from such order.

[7]. 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** 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.

[8]. For the reasons recorded hereinabove, the orders passed 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 are reiterated. There is no error of jurisdiction in the impugned order passed by the trial Court. This revision is found to be devoid of merits and the same is accordingly dismissed.

November 19, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No