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

CR No. 7899 of 2018

Date of Decision: 26.11.2018

Devi Singh

.....Petitioner

Vs

Pritam Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naveen Batra, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred by the petitioner against the order dated 01.11.2018 (Annexure P-5) passed by the Civil Judge (Jr. Divn.) Anandpur Sahib, District Rupnagar vide which application for appointment of Local Commissioner was dismissed.

[2]. The plaintiffs/respondent no.1 and 2 filed a suit for permanent injunction restraining the defendants/petitioner from interfering into the joint possession of the plaintiffs and further from dispossessing, creating hindrance in peaceful user and irrigation of fields of plaintiffs from the joint motor connection bearing no. AP38/0407 situated over the land as detailed in the headnote of the plaint. . In the said suit, application under Order

26 Rule 9 CPC read with Section 151 CPC was moved by the

defendant/petitioner for appointment of Local Commissioner to verify the factual position at the site especially with regard to the tube-well used by the plaintiff, Pritam Singh. It was submitted by the defendant/petitioner that plaintiffs have wrongly stated in their suit that they are using motor of Devi Singh and Vinod Kumari for irrigation, but they are using the motors of Ram Singh and Ujjagar Singh.

[3]. The application was contested by the plaintiffs/respondents on the ground that the appointment of Local Commissioner would amount to collection/creation of evidence and assistance of the Court cannot be taken by the defendant/ petitioner to prove his **possession**.

[4]. Trial Court dismissed the application vide the impugned order on the ground that since the appointment of Local Commissioner would amount to collection of evidence and therefore the process of the Court cannot be availed to create evidence in favour of either of the parties to litigation. The Trial Court further held that this is a fact which the concerned parties have to prove or refute by way of leading affirmative evidence.

[5]. I have heard learned counsel for the petitioner.

[6]. It is a settled position that no party can be allowed to take recourse to the process of the Court for collecting evidence. The order rejecting prayer for appointment of Local Commissioner is not revisable in view of ratio of law laid down in

Harvinder Kaur and another vs. Godha Ram and another, 1979 AIR (Punjab) 76; 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.

[7]. The order refusing to appoint Local Commissioner does not decide any issue on merit inasmuch as that no right of the either party is adjudicated by such order for the purpose of the suit and, therefore, such order is held to be not revisable. Refusal to appoint Local Commissioner is nothing to do with the rights of the parties. It is squarely covered under the discretion of the Court and in case such discretion is refused, no right of the party is prejudiced, therefore, revision is incompetent against such order.

[8]. In **Sumer Chand Jain vs. Vishnu Bhagwan Mangla 2006(2) RCR (Civil) 445,** this Court while interpreting the earlier precedents held that the revision petition was not maintainable under Section 115 CPC, then by mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. Such an order cannot be interfered with even under Article 227 of the Constitution of India. The view expressed in **Hari Om vs. Minish Kumar, 2005(2) PLR 690** was reiterated to hold that by mere change in the headnote of the petition the subject matter cannot be allowed to be wriggled out

from the rigor of the law, which is otherwise well settled in view of consistent view of precedents on the subject matter.

[9]. The aforesaid view was also reiterated in **Balbir Kaur and others vs. Pushpa Widge and others, 2006(2) RCR (Civil) 318; Rajiv Kumar Batra vs. Kashmiri Lal Sika, 2010(6) RCR (Civil) 37** and **Rambir Singh vs. Gram Panchayat, Narhera and others, 2012(1) PLR 429.**

[10]. It is not a case that the trial Court has no power to appoint Local Commissioner in view of facts and circumstances of the case. The issue is that once the trial Court has exercised its jurisdiction to find that the case is not worth consideration for an appointment of a Local Commissioner, then in such eventuality, revision petition under Section 115 CPC and under Article 227 of the Constitution of India is not maintainable.

[11]. The exercise of jurisdiction under Article 227 of the Constitution of India is dependent upon the error of jurisdiction exercised by the trial Court or failure of jurisdiction so vested in it. It is a case of proper exercise of jurisdiction by the trial Court, based on precedents on the issue. Once the jurisdiction has been exercised against the petitioner, then it does not lie to the mouth of the petitioner that in the light of some precedents of different High Courts, the jurisdiction has not been properly exercised.

[12]. The perusal of the impugned order and the controversy

involved herein also would show that the order has not decided any substantial right between the parties. Merely rejecting the plea to appoint a Local Commissioner has not decided anything between the parties except the plea which was raised by the plaintiffs and the same was not entertained. Even otherwise, the process of the Court cannot be involved to collect evidence for either of the parties. Keeping in view the nature of controversy between the parties, the process of the Court cannot be invoked for a controversy to be proved by the parties with reference to the evidence to be led by them.

[13]. In considered opinion of this Court, there is no error of jurisdiction in the impugned order passed by the Civil Judge (Jr. Divn.) Anandpur Sahib, nor any illegality has been committed in rejecting the plea for appointment of local Commissioner.

[14]. This revision is accordingly, dismissed.

26.11.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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| 1. | Whether speaking/reasoned | : Yes/No |
| 2. | Whether reportable | : Yes/No |