

(106) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7934 of 2018

Date of decision : 21.12.2018

Mahender Singh

... Petitioner

Versus

Dhoop Singh and others

.... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Rajesh Bansal, Advocate for the petitioner.

B.S. WALIA, J. (ORAL)

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 15.09.2018 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.), Panipat dismissing the application (Annexure P-4) filed by the petitioner for appointment of a Local Commissioner.

[2] Learned counsel for the petitioner contended that respondent No.4 i.e. official defendant No.4 had stated before the learned trial Court that he had no objection to the appointment of a Local Commissioner, therefore, the impugned order rejecting the prayer for appointment of Local Commissioner was legally unsustainable.

[3] I have considered the submissions of learned counsel for the petitioner.

[4] Civil Suit was filed by the petitioner/plaintiff for a declaration that the suit land was a part and parcel of a public road as well as for a mandatory injunction directing defendant Nos.1 to 3 to remove the

encroachment made by them therein as well as for permanent injunction for restraining them from raising construction as well as from making further encroachment. It, therefore, transpires that the very basis of the suit is the alleged encroachment of suit land by respondent/defendant Nos.1 to 3, onus of proving which is exclusively on the petitioner/plaintiff for which he was required to lead evidence in affirmative in respect thereto.

[5] Issues were framed in the case on 04.12.2013. Thereafter additional issues were framed on 19.08.2105 after the amendment of the plaint. Several effective opportunities were availed by the petitioner/plaintiff for leading evidence whereafter the petitioner/plaintiff voluntarily closed his evidence in the affirmative on 30.11.2015. However, the application for appointment of Local Commissioner was moved by the petitioner/plaintiff at the rebuttal stage. The application was dismissed by the learned trial Court on the ground that evidence was to be led by the petitioner/plaintiff in the affirmative and he could not be permitted to lead evidence regarding alleged fact of encroachment in rebuttal. Moreover, a Local Commissioner could not be appointed for collecting evidence on behalf of parties through the agency of the Court.

[6] A Division Bench of this Court in **Harvinder Kaur and another v. Godha Ram and another, 1979 AIR (Punjab) 76** held that an order passed during the course of a suit or proceeding is revisable only when it determines or adjudicates some right or obligation of the parties in controversy, whereas another Division Bench of this Court in **Pritam Singh and another v. Sunder Lal and others, 1990 PLJ 418** has held that an order refusing to appoint a Local Commissioner does not decide any issue nor adjudicates any rights of the parties for purpose of the suit, therefore, is not revisable. Even otherwise, it is well-settled that a Local Commissioner

cannot be appointed to gather evidence on behalf of either of the parties. A Co-ordinate Bench of this Court in **Banarsi Dass v. Sunita Rani @ Sarita Rani and others, 2017 (2) RCR (Civil) 274** has held that a Local Commissioner cannot be appointed at the behest of either party to the suit for the purposes of collection of evidence and that refusal of prayer for appointment of a Local Commissioner does not decide any right inter se the parties.

[7] In the light of the position as noted above, I do not find any infirmity with the order dated 15.09.2018 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.), Panipat. Accordingly, the Revision petition being bereft of merit is dismissed in limine.

(B.S. Walia)
Judge

21.12.2018
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| 1. | Whether speaking/reasoned | : | Yes/No. |
| 2. | Whether reportable | : | Yes/No. |