

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 8952 of 2017

Date of Decision: 04.09.2018

Vijay and another

.....Petitioners

Vs.

Sunil Mohinder and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rakesh Chopra, Advocate,
for the petitioners.

AMOL RATTAN SINGH, J. (ORAL)

Learned counsel for the petitioners submits that firstly, as regards the maintainability of a revision petition, this revision petition is maintainable.

That issue need not be gone into at all, for the simple reason that vide the impugned order appointment of a Local Commissioner has been refused, on the ground that the information that is sought to be collected/recorded by the Local Commissioner amounts to collection of evidence by the Commissioner which is impermissible. This Court agrees with that view.

The information that the petitioners wish the Local Commissioner to collect/record is, as to whether sewerage or other pipes are running through the passage in question, which as per the petitioners is a common passage, whereas it is the case of the respondents-plaintiffs that it is their private passage.

Learned counsel for the petitioners has also relied upon a judgment of a co-ordinate Bench of this Court in **Deepak Narula** vs. **Shri Satruhan Dwivedi** **and others** 2013 (33) RCR (Civil) 255, to submit that the ambit of revision under

Article 227 is wide enough to admit of any examination of an incorrect order or to pass any order or direction in its supervisory jurisdiction, to see that no any irregularity is committed and justice is properly done.

As per that judgment it was also held that a Local Commissioner can be appointed to identify boundaries etc.

Whereas there can be no quarrel with the aforesaid proposition of law, however, I do not see how that is applicable to the issue at hand, where the petitioners are seeking that the Local Commissioner should collect actually what amounts substantial evidence, which the petitioners in any case could have very easily led by way of producing site plans of the Municipality and by examining any official of the Municipality, as has also been observed by the trial Court.

Consequently, I agree with the observation of the trial Court to that effect.

Hence, since the information sought to be recorded by the Local Commissioner actually amounts to directing the Local Commissioner to gather the aforesaid evidence on behalf of the petitioners, I see no reason to entertain this petition and it is accordingly, dismissed.

Naturally, with the petitioners having filed an application for examining a Local Commissioner upon respondent no. 1 having initially stated in his cross-examination that he does not object to such appointment, (as contended), neither the impugned order, nor dismissal of this petition would be taken to be an adverse inference against the petitioners as regards non-acceptance of any such application is concerned.

It is, however, fully clarified that this observation would not be taken to be one on the merits of whether the passage is a common passage or a private passage, which would be determined by the trial Court wholly on the basis of

evidence led.

September 04, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.