

202

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

CR No. 1642 of 2016 (O&M)

Date of Decision: 13.03.2019

Sukhvir Singh

-Petitioner

Vs

Harbans Kaur and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.S. Yadav, Advocate, for
Mr. Sunny K. Singla, Advocate,
for the petitioner.

Mr. Narinder Singh, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J.

1. Petitioner has assailed the order dated 16.02.2016 passed by Civil Judge (Junior Division), Malerkotla vide which application for appointment of local Commissioner for demarcation of disputed property in the application under Order 21 Rule 32 CPC was dismissed.

2. Petitioner filed an application under Order 21 Rule 32 CPC on the ground that the respondents have encroached upon some portion of the suit property which was held to be in possession of the applicant in the judgment and decree dated 13.08.2003.

3. In order to ascertain factual position, indulgence of the Court was sought for appointment of local Commissioner for demarcating the suit property.

4. The application was contested on the ground that the Court cannot be instrumental in collecting evidence for any of the parties. The application was filed on 19.10.2010. Thereafter, issues were framed on 06.04.2011.

5. Petitioner availed as many as 16 opportunities and thereafter, evidence of the petitioner was closed on 06.01.2015. Thereafter, evidence of the respondents started and the same was closed on 01.09.2015 and the case was fixed for documentary evidence of the respondents.

6. The application in question was filed at the fag end on the ground that the alleged encroachment has been done by the respondents. Petitioner had already closed his evidence. At the stage of conclusion of the proceedings, application in question came to be filed.

7. It is a settled principle of law that process of the Court cannot be utilized to collect evidence. Parties to the *lis* have to lead their substantive evidence in order to prove their assertion and denial by means of lawful evidence.

8. The order declining to appoint local Commissioner has not decided any substantive right of the parties.

9. In Harvinder Kaur and another vs. Godha Ram and another, 1979 PLJ 562 DB, this Court has held that revision against the order refusing to appoint the Local Commissioner is not maintainable. It was concluded that no revision would lie against the order passed under Order 26 Rule 9 CPC. The view expressed by the High Court in M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531 was upheld. Similar view was taken in Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418.

10. The order refusing to appoint Local Commissioner has not decided any issue on merits in the present case. No right of the petitioner has been adjudicated by the impugned order. Petitioner would be well within his right to lead substantive evidence during trial, therefore, such order is held to be not revisable. Refusal to appoint Local Commissioner has nothing to do with the rights of the petitioner. Petitioner can lead his substantive evidence for which discretion of the Court cannot be utilized to collect evidence for himself. In case such a discretion is refused, no right flows from such refusal to assail the same in the High Court.

11. In Sumer Chand Jain vs. Vishnu Bhagwan Mangla, 2006(2) R.C.R. (Civil) 445, the Court interpreted on the basis of

earlier precedents that even revision petition under Article 227 of the Constitution of India is not maintainable against the order refusing to appoint Local Commissioner. By mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. The view expressed in **Hari Om vs. Minish Kumar, 2005(2) PLR 690** was reiterated that by mere change in the headnote of the petition, the subject matter cannot be allowed to be wriggled out from the rigor of law.

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

13. Even the Hon'ble Apex Court in **Rajinder & Co. vs. Union of India and others, 2003(1) R.C.R. (Civil) 755** held that the question whether the report of the Local Commissioner is finally acceptable or not would be decided by the concerned Court *de hors* the order. The High Court cannot interfere with the order of the trial Court appointing the Local Commissioner for inspection of the site.

14. From the aforesaid interpretation, it can be noticed that the supervisory jurisdiction of the High Court in terms of Article 227 of the Constitution of India, though wide enough, but

the same can only be exercised, if any substantive right of a party is decided by the impugned order. Against the appointment or rejection of the Local Commissioner, the party can lead evidence. In case of acceptance of the prayer for appointment of Local Commissioner, the party can file objection to the report of Local Commissioner. In case refusal to appoint Local Commissioner, the party is still at liberty to adopt other mechanism to prove his grievance. The aforesaid view was again endorsed by this Court in **Harpal Singh vs. Harmohinder Singh and others, 2013(2) R.C.R. (Civil) 892.**

15. Even this Court while deciding **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 has taken the same view.

16. In view of aforesaid position, I find that there is no jurisdictional error in the impugned order.

17. Consequently, no indulgence can be granted to the petitioner.

18. This revision petition is accordingly, dismissed.

13.03.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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