

(127) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIGARH

CR No.423 of 2019
Date of decision : 21.01.2019

Gram Panchayat

.... Petitioner

Versus

Dharam Singh and Others

.... Respondents

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

Present: Mr. Sanjay Jain, 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 02.01.2019 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.), Ambala dismissing the application for appointment of Local Commissioner on the ground that the same had been moved just to fill up the lacuna and that the application had been moved merely to create evidence which could not be permitted, besides, final arguments had been addressed in the matter.

[2] Brief facts of the case leading to the filing of the revision petition are that an application for appointment of Local Commissioner was filed under Order 26 Rule 9 CPC on the ground that there was a phirni owned by the petitioner/defendant Gram Panchayat situated between Khasra Nos.341 and 342 and on the western side of the baras of Dharam Singh, Vishwas Singh, Kaka Singh and Pritam Singh, that there was a katcha berm adjacent to the pacci phirni. The respondents/plaintiffs under the garb of the present suit wanted to encroach upon the said katcha berm of the phirni forcibly and illegally which had been left by the petitioner/defendant for the

construction of drains/naalas for the smooth flow of water and further that in order to ascertain the aforesaid katcha portion of three feet between the phirni and property of the respondents/plaintiffs, it was necessary to appoint Local Commissioner from the Revenue Department to carry out inspection and to demarcate katcha berm of three feet between the portion of phirni and property of respondents/plaintiffs.

[3] It needs noticing here that after evidence had been led by the parties, the case was finally argued also. However, before judgment could be passed, predecessor of the learned Court was transferred whereupon an application for additional evidence for seeking report of demarcation moved by the petitioner/defendant was dismissed by the learned trial Court. Thereafter, the petitioner/defendant filed the application under Order 26 Rule 9 CPC. The petitioner/defendant was to prove the phirni and khasra number as mentioned in the application under Order 26 Rule 9 CPC in its affirmative evidence. However, the same was not done. Application for additional evidence for seeking report of demarcation was dismissed. The said order is not shown to have been challenged. In the circumstances, the application for appointment of Local Commissioner to ascertain the katcha portion of three feet between the phirni and property of the respondents/plaintiffs is nothing except an application in order to seek the assistance of the Court to gather evidence on behalf of the petitioner/defendant. It is settled law that a Local Commissioner cannot be appointed for the purpose of gathering evidence for either of the parties. Reference in this connection can be made to the decision of this Court in **Sunil and others v. Suresh Kumar and others, 2017 (2) RCR (Civ.) 882.** A perusal of the aforesaid decision reveals that the same was a case where application for appointment of Local Commissioner was dismissed by

holding that the order refusing to appoint a Local Commissioner under Order 26 Rule 9 CPC was not revisable nor could such an order be interfered with under Article 227 of the Constitution of India.

[4] 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** 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** 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 rights inter se the parties.

[5] In the light of the position as noted above, I do not find any infirmity with the order dated 02.01.2019 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.), Ambala. Accordingly, the revision petition being bereft of merit is dismissed in limine.

(B.S. WALIA)
JUDGE

21.01.2019
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