

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

**CR No.1076 of 2019(O&M)
Date of Decision: 14.02.2019**

**Swaran Singh (deceased) through his LR Jarnail Singh
.....Petitioner**

**Versus
Gurbakash SinghRespondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. P.S. Rai, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 18.05.2018 passed by Civil Judge (Junior Division), Jalandhar vide which the application under Order 26 Rule 9 CPC for appointment of Local Commissioner filed by the petitioner was dismissed.

[2]. Plaintiff filed a suit for possession of land measuring 1 kanal 6 marlas illegally encroached upon by the defendant comprised in khasra/khatoni as shown in the headnote of the plaint. Consequential relief of permanent injunction was also sought seeking to restrain the defendant from further encroaching the land of the plaintiff and also from changing the nature of the suit property by way of construction in any manner.

[3]. In view of nature of the suit, the plaintiff is supposed to lead evidence in order to prove the alleged encroachment made by the defendant over his land. He has also filed a site plan along with the suit showing the extent of alleged encroachment done by the defendant. Plaintiff is required to lead his substantive evidence during trial and the process of the Court by way of demarcation by the Local Commissioner cannot be utilized.

[4]. Learned counsel for the petitioner relied upon **Deepak Narula Vs. Shri Satruhan Dwivedi and others, 2013(33) RCR (Civil) 255** and **CR No.5905 of 2013** titled '**Harjit Singh Vs. Pargat Singh**' decided on 09.02.2016 in support of his contention.

[5]. The aforesaid judgments have been considered by this Court in **CR No.6108 of 2018** titled '**Ashwani Kumar Vs. Amarjit Kaur and others**' decided on 12.09.2018 and it was held that perusal of **Deepak Narula's case (supra)** would show that the same revolved around its own facts, where there was difference in *khasra* number mentioned in the sale deed as well as in the plaint. The property was required to be identified by boundaries. Even the Court has observed that an occasion arises in the particular case, where the Court ought to have appointed the Local Commissioner to identify the property with

reference to two *khasra* numbers. The identification by such mechanism would have decided the substantial rights of the parties in the said case.

[6]. In **Harjit Singh's case (supra)**, the controversy was in respect of the evidence which was led by the parties and there was an ambiguity in the demarcation report already on record. Objections were raised against the demarcation report on the ground that the same was carried out at the back of the party, therefore, in order to do complete justice, the indulgence was granted. Existence of earlier demarcation report and filing of objections and decision in pursuance thereto would decide a substantial right of a party.

[7]. The basic principle for interference in the matters regarding appointment of Local Commissioner is that the Court can grant indulgence, if the order accepting or refusing to appoint the Local Commissioner has decided a substantial right of a party. When no substantial right of a party is decided by an order, revision against such order is not maintainable.

[8]. 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.**

[9]. 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 will 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.

[10]. 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.

[11]. 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.

[12]. 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.**

[13]. Even while rejecting the prayer for appointment of Local Commissioner, the trial Court has relied upon **Tatvadarsha Bandhu Pvt. Ltd., vs. Municipal Corporation, 2015(2) PLJ 349**, wherein it was held that the appointment of Local Commissioner cannot be made for collecting evidence for a party and supporting its cause. The application was dismissed.

[14]. 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.

[15]. In view of above, I do not find any error of jurisdiction in the impugned order dated 18.05.2018 passed by Civil Judge (Junior Division), Jalandhar. This revision petition is accordingly dismissed.

14.02.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE****Whether reasoned/speaking
Whether reportable****Yes/No
Yes/No**