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

**Civil Revision No.3594 of 2019
Date of Decision: 29.05.2019**

Jatinder Singh Mann

.....Petitioner

Vs

Charanpal Singh Mann

....Respondent

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

Present: Mr. Arun Jindal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 10.04.2019 passed by the Addl. Civil Judge (Sr. Divn.) Sangrur vide which the application filed by the plaintiff under Order 26 Rule 9 CPC for appointment of Local Commissioner was dismissed.

[2]. Plaintiff filed a suit for permanent injunction restraining the defendant from interfering in the use of road and from making encroachment on any part of the road including the construction over the land in question. Plaintiff alleged that the defendant illegally and forcibly wants to encroach upon the portion shown by letters 'ABC' in green colour in the site plan

which is under ownership of *Jumla Mustarka Malkan* and defendant is bent upon to construct the same by making encroachment and also threatened to interfere in the use of the road in question. Local Commissioner was sought to be appointed in order to see actual position on the spot. Defendant contested the application.

[3]. It is a settled principle of law that the process of the Court cannot be utilized to collect evidence by either of the parties. Plaintiff would be well within his right to lead substantive evidence in the context of aforesaid allegations. The stand taken by the defendant in the written statement would be commented upon by the trial Court at an appropriate stage.

[4]. The order rejecting the prayer for appointment of Local Commissioner is held to be not revisable in view of law laid down in *Harvinder Kaur and another vs. Godha Ram and another, 1979 AIR (Punjab) 76, M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531* and *Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418*. The order refusing to appoint Local Commissioner does not decide any issue on merits. No right flows from such an order as nothing has been adjudicated by the Court which would frustrate the case of the either of the sides. Refusal to appoint Local

Commissioner has nothing to do with the rights of the parties, nor right of any of the parties has been prejudiced.

[5]. The view expressed in the aforesaid precedents has been 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.**

[6]. For the reasons recorded hereinabove, I find that the process of the Court cannot be utilized to collect evidence. This revision petition is found to be devoid of merits and is dismissed as such.

May 29, 2019

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No