

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4480 of 2019

Date of decision: 25.07.2019

Krishan Kumar

.....Petitioner

Versus

Lalita Gupta and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rakesh Dhiman, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge is to the order dated 02.07.2019 passed by the Civil Judge (Junior Division), Gurugram, whereby application filed by plaintiff-respondent No.1 for appointment of Local Commissioner, has been allowed.

Plaintiff-respondent No.1 has filed a suit for declaration with consequential relief of permanent injunction to the effect that 33 feet wide *pucca* road shown in red colour in the site plan, situated within the revenue estate of village Begampur Khatola, Sub Tehsil Kadipur, District Gurugram, is a common passage meant for common use of the plaintiff and the defendants have no common right, title or interest to change the usage of this passage in any manner.

Learned counsel for the petitioner states that the plaintiff has to stand on her own legs and could not be allowed to take help of Local Commissioner in order to collect evidence in her favour. Learned counsel while referring to the judgments passed by this Court in Smt. Ulfat vs. Hardeep Singh, 2011 (4) PLR 340 and Rambir Singh vs. Gram

impugned order is liable to be set aside.

In Smt. Ulfat's case (supra), an application for appointment of Local Commissioner had been made by the defendant, which had been dismissed by the trial Court. His revision petition was dismissed by observing that the same was not maintainable against an order dismissing application for appointment of Local Commissioner. In para nos.9 & 10 of the judgment, it was observed as under:-

“9. In *Pritam Singh and another v. Sunder Lal and others*, 1990 (2) PLR 191, a Division Bench of this Court by relying upon the decision of this Court rendered in *Harvinder Kaur v. Godha Ram*, AIR 1979 (1) Punjab and Haryana 147 has observed that no revision would lie against an order passed under Order 26 Rule 9 of the Code.

10. This Court in subsequent judgment rendered in *Sumer Chand Jain v. Vishnu Bhagwan Mangla*, 2006 (2) RCR (Civil) 445 by placing reliance upon Harvinder Kaur's case (supra) and Pritam Singh's case (supra) observed as under:-

“In two Division Bench decisions of this Court in *Smt. Harvinder Kaur and another v. Godha Ram and another*, AIR 1979 Punjab and Haryana 76 and *Pritam Singh v. Sunder Lal*, 1991 (1) RRR 356, it has been held that the **order** refusing to **appoint** the **Local Commissioner** under Order 26 Rule 9 CPC is not revisable under Section 115 CPC, therefore, such an order should not be interfered now under Article 227 of the Constitution of India. In this regard, in *Hari Om v. Minish Kumar*, (2005-2) PLR 690, it was observed by this Court that if a revision petition under Section 115 CPC against the impugned order is not maintainable, then by mere change in the head note of the petition, the substance cannot be replaced to wriggle out from the rigors of law which is well settled that no revision petition under Section 115 CPC is maintainable.”

The aforesaid judgments have again been followed in Rambir Singh's case (supra). As per ratio of these judgments, no revision would lie

against an order passed under Order 26 Rule 9 CPC.

In view of the said fact, present petition is dismissed.

25.07.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No