

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

-.-

**CR-2747 of 2021(O&M)
Date of Decision: 12.11.2021**

Ranjeet Singh

....Petitioner

VERSUS

Jarnail Singh & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Rakshit Gupta, Advocate for
Mr. Rakesh Gupta, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been preferred by defendant No.3 against the order dated 11.10.2021 (Annexure P-1) passed by the Civil Judge, Junior Division, Guhla in Civil Suit No.RBJ-131 of 2021 titled as '*Jarnail Singh & Another Vs. Bhupinder Singh Others*', dismissing the application filed by the defendant Nos.1 to 3 and 5 for the appointment of a Local Commissioner.

The brief facts relevant to the present *lis* are that a suit for permanent injunction was preferred by the plaintiff-respondent Nos.1 and 2 qua agricultural land measuring 29 kanals 18 marlas entered at Khewat No.176, Rect. No.41, Idilla No.15 (7-7), 16 (8-0), Rec. No.42, Killa No.11 (7-7) and 20/2 (7-4), Kittas 4 situated within the revenue estate of Village Badsui, Tehsil Guhla vide Jamabandi for the year 2012-2013. It has been averred in the plaint that the plaintiffs are in exclusive actual cultivating possession of the suit land since the time of their father Naranjan Singh, having mortgage rights which have been converted and matured into

ownership due to lapse of time. It has further been averred that the defendants are also mortgagees but have never been in possession over any of part of the suit land.

Written statement was filed on behalf of the defendant Nos.1 to 3 and 5 wherein preliminary objection was raised that the defendants are co-sharers being mortgagees in the suit land and hence the suit was liable to be dismissed on this score alone. It has further been denied that the defendant Nos.1 to 3 and 5 are not in possession of the suit property.

An application was filed by the defendant Nos.1 to 3 and 5 for appointment of a Local Commissioner stating therein that defendant No.5 is in exclusive actual cultivating possession of Killa No.11 (7-7) of Rectangle No.42 as mortgagee and that the possession of defendant No.5 over the said Killa No.11 (7-7) of Rectangle No.42 is according to the share of the defendant Nos.1 to 5 and he is not in more than his share. It has further been averred that defendant No.5 used to irrigate the said Killa No.11 (7-7) of Rectangle No.42 from the tubewell of his brother Ranjit Singh, defendant No.3, existing in Killa No.13 of Rectangle No.42 through a khal shown in green colour in site plan dated 27.10.2018. It was, therefore, prayed for appointment of a Local Commissioner with a direction to visit the suit land and to report about the existing position of the suit land as well as about Killa No.11 (7-7) of Rectangle No.42 and its source of irrigation including khal. Reply was filed to the said application wherein it was denied that any of defendants were in possession of the suit land including Killa No.11 of Rectangle No.42. Vide impugned order dated 11.10.2021, the said application was dismissed holding as under:-

“Arguments heard. Perusal of the file shows that this application is pending since long. Also, this Court is of the opinion that Local Commissioner can be appointed only when there is some doubt left in the eyes of Court and if such doubt can be removed by way of leading evidences then local commissioner should not be appointed. Learned counsel for the applicants failed to lead any sufficient evidence. While adjudicating the matter in hand this Court placed reliance upon Santokh Singh and Others Vs. Majinder Singh and others, 2020(4) RCR (Civil) 155 (P&H), wherein it was held that local commissioner cannot be appointed to conclude evidence for either of the party.”

At the outset a query was put to the learned counsel for the petitioner (defendant No.3) regarding the maintainability of the present petition. Learned counsel for the petitioner has relied upon the order passed in ***M/s Allwin Infrastructure Limited, Panchkula Vs. M/s MAXXUS Developers & Ors. [2021(1) RCR (Civil) 177]*** to contend that the revision would be maintainable. Further reliance has been placed on ***Balwinder Singh and Another Vs. Dilbag Singh and Others [2019(1) RCR (Civil) 533]***.

Heard.

In the present case the challenge is to the order dismissing the application for appointment of a Local Commissioner. A Division Bench of this Court in the case of ***Pritam Singh Vs. Sunder Lal [1990(2) PLR 191]***, inter-alia held as under :-

“6. After getting through the Judgments cited in the reference order, we do not find that the earlier Judgment in Harvinder Kaur's case (supra) requires any re consideration. The order refusing to appoint a local commissioner does not decide any

issue, nor adjudicates rights of the parties for the purpose of the suit and is, therefore, not revisable. The distinction sought to be made by the learned Single Judge in view of the Judgment in M/s Sadhu Ram Bali Ram's case (supra) was clearly noticed by the Division Bench in Harvinder Kaur's case (supra) and it was observed :

“It may be observed that the facts of M/s Sadhu Ram Bali Ram's case were different as in that case the onus of an issue had been wrongly placed and while deciding that question, it was held that such an order would be revisable.”

Apart from that, placing the onus of an issue has something to do with the rights of the parties whereas refusing to appoint a Commission under Order 26, Rule 9, Code of Civil Procedure, has nothing to do with the rights of the parties as such. It is the discretion of the Court to appoint a Commission there under and if the Court refuses to appoint a Commission, then no right of any party can be said to be prejudiced as such.”

Similar view has been taken by this Court in the case of Smt.

Smt. Raksha Devi Vs. Madan lal and others [2017(3) PLR 249] wherein it has categorically been held that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner. It is trite that an order refusing to appoint a Local Commissioner does not decide any issue nor does it adjudicate any rights of the parties for the purpose of the suit and hence would not be a revisable order.

In view of the law laid down by the Division Bench of this Court, I do not find any illegality or irregularity in the order passed by the Court below.

The revision petition is accordingly dismissed.

November 12, 2021
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO