

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.299 of 2019 (O&M)

Date of Decision : 15.12.2022

Mohinder Singh (now deceased) through his LRs

....Petitioners

VERSUS

Kuldeep Singh Bhullar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saksham Mahajan, Advocate for
Mr. Amit Kohar, Advocate for the petitioners.

Mr. Santosh Sharma, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been preferred against order dated 14.09.2018 whereby the application filed by the defendant-petitioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908(for short 'CPC') for appointment of a Local Commissioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for declaration on the ground that he is owner in possession of land measuring 4500 sq. yards in village Daad, District Ludhiana as per sale deed dated 12.04.2004 bearing Wasika no.647, as shown in the site plan attached with the plaint and as described in the plaint, as also for permanent injunction restraining the defendant-petitioner herein from interfering in the peaceful possession of the plaintiff-respondent as also from creating any third party rights. When the case was fixed for evidence of the plaintiff-respondent, an application was filed by the defendant-petitioner under Order XXVI Rule 9 CPC for appointment of a Local Commissioner.

The said application was filed on account of the fact that the suit was for declaration and permanent injunction by the plaintiff-respondent claiming he

was owner in possession of the land measuring 4500 sq. yards, hence, the property was liable to be demarcated by the revenue officials. The said application was contested by the plaintiff-respondent and the same was dismissed vide the impugned order dated 14.09.2018. Hence, the present revision petition.

Learned counsel for the defendant-petitioner has referred to judgments of Hon'ble Supreme Court in cases of **Haryana Waqf Board vs. Shanti Sarup & Ors. [(2008) 8 SCC 671]** and **Shreepat vs. Rajendra Prasad & Ors. [2000 (6) Supreme 389]** and that of this Court in case of **M/s Allwin Infrastructure Limited, Panchkula vs. M/s MAXXUS Developers & Ors. [2021 (1) RCR (Civil) 177]**.

Per contra learned counsel for the plaintiff-respondent has relied upon the judgment in the case of **Pritam Singh & Anr. vs. Sunder Lal & Ors. [1990 (2) PLR 191]** to contend that no revision is maintainable against dismissal of the application for appointment of a local commissioner.

I have heard learned counsel for the parties.

In the present case the plaintiff-respondent has approached the Court by filing a suit for declaration to the effect that he is owner in possession of land measuring 4500 sq. yards as described in the plaint. The suit is still at the initial stage inasmuch as the evidence of the plaintiff-respondent has just commenced. At this stage, an application was filed by the defendant-petitioner for appointment of a Local Commissioner for demarcation of the property on the ground that there is a dispute *qua* the demarcation of the land. The plaintiff-respondent in the present case is yet to prove his case by leading evidence. The defendant-petitioner has not even

started his evidence and it would be premature to come to a conclusion that there is any dispute or confusion regarding the demarcation of the land. What in fact the defendant-petitioner is wanting is for the Court to collect evidence for him, which cannot be permitted.

A Division Bench of this Court in the case of **Pritam Singh** (*supra*) 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. Raksha Devi Vs. Madan Lal & Ors. [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.

The judgments relied upon by the learned counsel for the defendant-petitioner would be of no avail to him inasmuch as in the case of **M/s Allwin Infrastructure Limited, Panchkula** (*supra*) the revision petition was filed challenging the appointment of the Local Commissioner, which was dismissed on merits finding no illegality or infirmity in the impugned order. The judgment relied upon by learned counsel for the defendant-petitioner in case of **Haryana Waqf Board** (*supra*) would have no applicability in the present case inasmuch as the Hon’ble Supreme Court while dealing with the said case held that since there was a dispute regarding the demarcation of the disputed land, hence, an investigation by appointing a local commissioner under Order XXVI Rule 9 CPC ought to have been carried out. The judgment relied upon by learned counsel for the defendant-petitioner in the case of **Shreepat** (*supra*) would also have no applicability

in the present case as in the said case there was a serious dispute about the demarcation of the land. In the present case at this initial stage when the parties have not even led their evidence, to appoint a local commissioner would be collecting evidence for the parties, which cannot be permitted in law.

In view of the law laid down by the Division Bench of this Court in case of **Pritam Singh** (*supra*) holding that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner as the 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, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(**ALKA SARIN**)
JUDGE

15.12.2022
jk

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