

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

-:-

**CR No.9046 of 2017 (O&M)
Reserved on : 22.11.2022
Date of Decision : 30.11.2022**

Jagdish Singh

....Petitioner

VERSUS

Gurmeet Singh (deceased) through LRs & Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K.S. Bedi, Advocate for the petitioner.

Mr. R.K. Rana, Advocate for respondent No.1.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed impugning the orders dated 04.01.2017 and 20.11.2017 passed by the Trial Court. Vide order dated 04.01.2017 the application filed by the plaintiff-petitioner for directing the defendant-respondent No.1 to permit the draftsman to measure Site Plan No.97-A and Khasra No.46 and 44/13 at the spot has been dismissed. Vide order dated 20.11.2017 the application filed by the plaintiff-petitioner for spot inspection by the Court or for appointment of a Local Commissioner for spot inspection has been dismissed.

The brief facts relevant to the present *lis*, as culled out from the paperbook and the website of the Trial Court, are that the plaintiff-petitioner filed a suit for possession and mandatory injunction for directing the defendant-respondent No.1 to vacate and remove encroachment from plot bearing Khasra No.44/13 (0-2) and to pay mesne profits till handing over of

possession and for partition of the suit land. It was averred that the defendant-respondent No.1 had encroached over the suit land and raised construction and was using it without the consent of the plaintiff-petitioner and that the ingress and egress of the plaintiff-petitioner had been blocked by the defendant-respondent No.1 on one side and by the other defendant-respondents on the other side. In their written statement the defendant-respondents denied having made any encroachment and alleged that they had purchased the suit property 20 years ago and had raised construction of their residential house which was never challenged by the plaintiff-petitioner.

The Trial Court framed the following issues on 07.11.2015 :

1. Whether the plaintiff is entitled to the decree for mandatory injunction as prayed for ? OPP
2. Whether the plaintiff has no locus-standi and cause of action to file and maintain the present suit ?
OPD
3. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
4. Whether the plaintiff has concealed the true and material facts from the Court ? OPD
5. Whether the suit is bad for mis-joinder of the necessary parties ? OPD
6. Whether the suit is bad for want of requisite Court Fee etc. ?
7. Relief.

On 16.07.2016 the evidence of the plaintiff-petitioner was

closed. On 06.12.2016, during the evidence of the defendant-respondents,

the plaintiff-petitioner moved an application for issuing directions to the defendant-respondent No.1 to permit the draftsman engaged by the plaintiff-petitioner to measure Site No.97-A and Khasra No.46 and 44/13 at the spot. This application was contested by the defendant-respondent No.1 who filed a reply. Vide impugned order dated 04.01.2017 the Trial Court dismissed the said application.

On 04.03.2017 the evidence of the defendant-respondents was closed and the suit was adjourned to 14.03.2017 for rebuttal evidence, if any. However, on 14.03.2017 the plaintiff-petitioner filed an application for spot inspection by the Court or in the alternative for appointment of a Local Commissioner from the revenue department to inspect the spot and report about the existing position about the possession of the plaintiff-petitioner and the defendant-respondents and the encroachment made by them. This application was also contested by the defendant-respondent No.1 who filed a reply. Vide impugned order dated 20.11.2017 the Trial Court dismissed the said application. Hence, the present revision petition against the orders dated 04.01.2017 and 20.11.2017.

Learned counsel for the plaintiff-petitioner has contended that the Trial Court has dismissed his two applications on illegal and erroneous grounds. According to counsel the undertaking of measurements by the draftsman and spot inspection by the Local Commissioner would establish that the defendant-respondent No.1 had infact encroached upon the suit land and this would enable the Trial Court to decide the matter judiciously.

Per contra, learned counsel for the defendant-respondent No.1 has argued that no revision petition is maintainable against an order declining to appoint a Local Commissioner. It is argued that the plaintiff-petitioner is seeking to create evidence after his evidence stands closed

which cannot be allowed and the plaintiff-petitioner is only trying to plug the loop-holes in his case. He has further submitted that the challenge to the order dated 04.01.2017 is belated.

Heard learned counsel for the parties.

Dealing with the impugned order dated 20.11.2017 first whereby the application of the plaintiff-petitioner for spot inspection by the Court or in the alternative for appointment of a Local Commissioner has been dismissed, 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.”

A 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 in **Pritam Singh’s** case (supra) that the order refusing to appoint a local commissioner does not decide any issue nor does it adjudicate the rights of the parties for the purpose of the suit, hence would not be revisable order, the present petition is liable to be dismissed.

Coming to the impugned order dated 04.01.2017 whereby the application of the plaintiff-petitioner for issuing directions to the defendant-respondent No.1 to permit the draftsman engaged by the plaintiff-petitioner to measure Site No.97-A and Khasra No.46 and 44/13 at the spot was dismissed, suffice is to say that the plaintiff-petitioner concluded his evidence on 16.07.2016. During the the evidence of the defendant-respondents he moved the application for issuing directions to the defendant-

respondent No.1 to permit the draftsman engaged by the plaintiff-petitioner

to measure Site No.97-A and Khasra No.46 and 44/13 at the spot. The Trial Court while dismissing the said application held that *“The evidence of the plaintiff has already been concluded on 16.07.2017. The applicant/plaintiff was having the opportunity to examine the said draftsman in his evidence and to prepare and prove the said outline plan of the house in occupation of defendant no.1 but it is not so in the appearing circumstances. The applicant/plaintiff has not explained in the present application as to why he chose not to examine the said witness in his evidence. It seems that the applicant/plaintiff by preferring the present application wants to put his defence again in support of his case, which is not permissible at this stage of suit”*. Even before this Court counsel for the plaintiff-petitioner is at pains to offer any explanation as to why the draftsman was not produced as his witness when his evidence was being led. Clearly, the plaintiff-petitioner wants to improve upon his case after his evidence stands closed which cannot be allowed. The revision petition qua order dated 04.01.2017 is also liable to be rejected.

The impugned orders passed by the Trial Court do not suffer from any illegality or infirmity. The present revision petition, which is devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off. Since the suit is pending since 2012, the Trial Court is requested to make an endeavor to decide the same within a period of three months from today.

Dismissed.

(ALKA SARIN)
JUDGE

30th November, 2022
tripti

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