

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

CR-1651-2022
Decided on : 13.12.2022

Ashok Kumar Bansal

..... Petitioner

Versus

Parmod Ashri and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. D.K.Gollen, Advocate
for the petitioner.

Mr. Chander Shekhar, Advocate and
Mr. Manmohan Saroop, Advocate
for respondents No.1 and 2.

Manjari Nehru Kaul, J.(Oral)

The petitioner is impugning the order dated 13.10.2021 (Annexure P-3) passed by Civil Judge (Jr. Divn.) Jind vide which his application filed under Order XXVI Rule 9 CPC r/w Section 151 CPC for appointment of local commissioner was dismissed.

Learned counsel for the petitioner has vehemently argued that the impugned order is contrary to the settled principles of law and thus, deserves to be set aside. He has submitted that the trial Court while passing the impugned order failed to appreciate that the report of the local commissioner qua the possession over the suit property, after carrying out demarcation would help in the just and effective adjudication of the issue in dispute between the parties. He further submits that the respondents have been trying to illegally dispossess the petitioner from the suit property and have also been disputing their ownership, therefore, the appointment of a

local commissioner would go a long way in assisting the Court to ascertain the ownership of the suit property as per the title records and documents. In support of his submissions, learned counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Haryana Waqf Board vs. Shanti Sarup and others, 2008(8) SCC 671.***

Per contra learned counsel for the respondents have controverted the submissions made by counsel opposite and contended that the revision petition against an order declining the appointment of a local commissioner is per se not maintainable. He has further submitted that the petitioner has instituted a suit for declaration qua the ownership, therefore, the petitioner would have to lead evidence in support of his case and cannot lean on the shoulders of the Court to collect evidence. In support of his submissions, learned counsel has placed reliance upon the judgments of Coordinate Bench of this Court in ***Deva Singh vs. Mohinder Singh and others, 2022(3) RCR (Civil) 444, Rajiv Kumar Batra vs. Kashmiri Lal Sika , 2010(6) RCR (Civil) 37*** and ***Pritam Singh and others vs. Sunder Lal and others, 1990 (2) PLR 191.***

Heard learned counsel and perused the relevant material available on record.

At the outset, it would be relevant to point out here that a Division Bench of this Court in *Pritam Singh and other's case(supra)* has held that a revision petition against an order refusing to appoint a local commissioner would not be maintainable as the discretion to appoint a local commissioner solely rests with the Court and still further, in case the Court refuses to appoint a commission, no right of a party can be said to have been

prejudiced.

Further more, the petitioner has instituted a suit for declaration to the effect that he is joint owner and in possession of his share in the suit property along with consequential relief of permanent injunction. Therefore, it would be imperative upon the petitioner to lead evidence to prove his ownership as well as his possession over the suit property. Local commissioner, no doubt, can be appointed by a Court but only if it deems fit to elucidate any point in case of any doubt after the parties have led their respective evidence. Local commissioner can certainly not be appointed to collect evidence on behalf of the parties.

In the circumstances as enumerated hereinabove, this Court does not find any illegality much less perversity in the impugned order. The case law relied upon by the learned counsel for the petitioner would not come to his rescue as in that case, the High Court had decided a Regular Second Appeal summarily without going into the aspect of appointment of a local commissioner. Moreover, the facts of the case therein are clearly distinguishable from the case in hand.

Accordingly, the present petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

13.12.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No