

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2204 of 2022

Date of Decision : 30.05.2022

Smt. Rajo Devi

....Petitioner

VERSUS

Suraj and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Johan Kumar, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been preferred by the plaintiff-petitioner for setting aside the order dated 22.03.2022 (Annexure P-5) passed by the Civil Judge (Junior Division), Palwal vide which the application for appointment of a Local Commissioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration and permanent injunction to the effect that she had purchased a plot measuring 6½ *marlas* from defendant no.1 vide registered sale deed no.2204 dated 12.06.2012 from agricultural land bearing *Khewat/Khatauni* No.11 min/11 Rect.No.13, Killa No.21/2/2(3-9), Rect. No.18, Killa No.1/1 (7-19), ½ (less than Biswa), 9/2 (5-10), 10/1 (2-9), 12/2 (0-1) Rect. No.19 Killa No.5/1 (3-12) total measuring 23 *kanals* 0 *marla* of 13/920th share situated in revenue estate of Village Teekri Brahmin, Tehsil and District Palwal and possession of the said plot was handed over by defendant no.1 to the plaintiff-petitioner.

Upon notice, the defendant-respondent no.2 filed a written statement wherein he denied the sale deed dated 12.06.2012 and possession

of the plaintiff-petitioner over the suit property.

Thereafter, during the pendency of the suit, the plaintiff-petitioner filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of a Local Commissioner for ascertaining and reporting the actual and factual position of the suit land and for demarcation of the suit property. The said application was contested by the defendant-respondents and vide the impugned order dated 22.03.2022 the said application was dismissed by the Trial Court.

Learned counsel appearing on behalf of the plaintiff-petitioner has contended that the appointment of the Local Commissioner would be necessary in order to ascertain the actual and factual position of the suit land.

At the outset, a query was put to the learned counsel for the plaintiff-petitioner regarding the maintainability of the present revision petition. Learned counsel has relied upon the orders passed in **M/s Allwin Infrastructure Limited, Panchkula Vs. M/s MAXXUS Developers & Ors. [2021(1) RCR (Civil) 177]** to contend that the revision petition would be maintainable.

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 going through the judgments cited in the reference order, we do not find that the earlier judgment in Harvinder Kaur's case (supra) requires any

reconsideration. 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.

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. Pending applications, if any, also stand disposed off.

30.05.2022
jk

(ALKA SARIN)
JUDGE

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