

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2752 of 2022

Date of Decision: 18.07.2022

Harchand

....Petitioner

VERSUS

Karambir Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Balraj Gujjar, 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 order dated 29.09.2021 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Tosham 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 permanent injunction for restraining the defendant-respondents from interfering in his peaceful possession and cultivation over Khasra/Killa No.78//25 min south (3-10) comprised in Khewat No.133 Khatauni No.197 situated in the revenue estate of village Bhurtana, Tehsil Tosham, District Bhiwani as per jamabandi for the year 2016-17 and further for restraining the defendant-respondents from causing interference in the use and enjoyment of the suit property by the plaintiff-petitioner and further that the defendant-respondents be restrained from changing the nature of the suit property in any manner, on the basis of oral as well as documentary evidence.

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 short 'CPC') for appointment of a Local Commissioner for bringing on record the existing position of the suit property. The said application was contested by the defendant-respondents *inter-alia* pleading that the plaintiff-petitioner had filed the application just to delay the proceedings and that the plaintiff-petitioner has no locus standi and cause of action to file the application. It was further pleaded that the application does not fall within the ambit of Order XXVI Rules 9 and 10 read with Section 151 CPC and that the Local Commissioner cannot be appointed to collect the evidence for any of the parties. Even the possession of the plaintiff-petitioner on the suit property was denied. Vide the impugned order dated 29.09.2021, 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 bring on record the existing position of the suit property.

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.

18.07.2022
jk

(ALKA SARIN)
JUDGE

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