

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

121

CR No.3021 of 2022

Date of Decision : 10.08.2022

Baljit Singh

....Petitioner

VERSUS

Shanti Syroop

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arvind Kashyap, 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 quashing the impugned order dated 04.07.2022 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Fatehgarh Sahib 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-respondent, his servants and agents, from blocking, damaging the passage leading to the house of the plaintiff-petitioner shown as 'ABCD' in site plan attached with the plaint, by way of raising construction or in any other manner.

The defendant-respondent filed his written statement denying the existence of such street as alleged by the plaintiff-petitioner. It was further pleaded in the written statement that no gate and window of the house of plaintiff-petitioner opens in the suit property for ingress and egress.

During the pendency of the suit, the plaintiff-petitioner filed an application for appointment of a Local Commissioner to see the existing

position at the spot. The said application was contested by the defendant-respondent pleading *inter-alia* that no door and window of the house of the plaintiff-petitioner opens in any street or the suit property and that a Local Commissioner could not be appointed in this case as the plaintiff-petitioner only wanted to collect some false evidence and that the judicial function of the Court cannot be delegated upon a Local Commissioner. Vide the impugned order dated 04.07.2022 the said application was dismissed by the Trial Court.

Learned counsel appearing on behalf of the plaintiff-petitioner has contended that the appointment of a 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.

10.08.2022

jk

**(ALKA SARIN)
JUDGE**

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