

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

CR-3233-2022 (O&M)

Date of decision : 17.08.2022

Ram Kishan

... Petitioner(s)

Versus

Surender and Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikram Singh, 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 No.1-petitioner for quashing the impugned order dated 08.07.2022 (Annexure P-7) passed by the Civil Judge (Junior Division), Karnal vide which the application for appointment of a Local Commissioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiffs filed a suit for declaration, mandatory injunction along with consequential relief of permanent injunction on the ground that they were owners in possession of the suit land measuring 01 Bigha 07 Biswa comprised in Khewat No.3879, Khatoni No.6052, Khasra No.2558 (1-7) situated within the revenue estate of Village Karnal, Tehsil and District Karnal as per jamabandi for the year 2004-05. It was further averred that the defendant-respondent Nos.1 to 4, who are having no concern with the suit land, started raising construction over the land possessed by the plaintiffs in their absence and therefore the plaintiffs sought a decree of possession by directing the

defendant-respondents to hand over the vacant possession of the suit land to the plaintiffs and mandatory injunction directing the defendant-respondent Nos.1 to 4 to remove their illegal construction. Defendant-respondent Nos.1 to 4 appeared and filed their separate written statement by taking preliminary objections. On merits, they denied the averments made by the plaintiffs. Thereafter, defendant Nos.1 and 2 moved an application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 for appointment of a Local Commissioner, which was allowed. The Local Commissioner submitted his report to which defendant Nos.1 and 2 filed objections on the ground that no notice was ever issued to them and the same is illegal.

Now the plaintiff-petitioner filed an application for appointment of a Local Commissioner to visit the spot and to demarcate the suit land through Electronic Total Machine (ETS) and Double Global Positioning Machine (DGPS) and to report about the existing state of affairs at the spot. The said application was contested by the defendant-respondents on the ground that the application is not maintainable and has been filed only at the fag end of the case and that a Local Commissioner cannot be appointed in this case to create evidence on behalf of the plaintiff-petitioner. Vide the impugned order dated 08.07.2022 the said application was dismissed.

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.

(ALKA SARIN)
JUDGE

17.08.2022
Yogesh Sharma

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