

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

CR-3423-2022 (O&M)
Date of decision : 26.08.2022

Gurbaksh Kaur

... Petitioner(s)

Versus

Kulwinder Kaur

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naveen Batra, 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 01.08.2022 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Sri Anandpur 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 possession for land measuring 1½ marlas being part of Khewat No.531/512 min, Khatoni No.653, Khasra No.248 (0-3) situated within the revenue limits of Village Nangali, HB No.354, Tehsil Nangal, District Rupnagar on the ground that the plaintiff-petitioner is the exclusive owner of the suit property measuring 3 marlas and the defendant-respondent is stranger qua the suit property, but is the owner of adjoining property

situated from the eastern side, therefore, taking the undue advantage of the fact the defendant-respondent encroached upon 1½ marlas of the land belonging to the plaintiff-petitioner and also raised illegal and unauthorized construction. The defendant-respondent appeared and filed her written statement by taking preliminary objections and denying the averments of the plaint. The plaintiff-petitioner filed an application for appointment of a Local Commissioner to visit the spot and to demarcate the suit land and to report about the existing state of affairs at the spot. The said application was contested by the defendant-respondent on the ground that a Local Commissioner cannot be appointed in this case to create evidence on behalf of the plaintiff-petitioner. Vide the impugned order dated 01.08.2022 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 and would assist in the proper adjudication of the suit.

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, there is no illegality or irregularity in the impugned order. The revision petition is dismissed. Pending applications, if any, also stand disposed off.

26.08.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

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