

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

**CM-10553-CII-2022 in/and
CR-5025-2019 (O&M)
Date of decision : 31.08.2022**

Neelam Rani

... Petitioner(s)

Versus

Aditya Kumar and Another

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Yowan Sharma, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

CM-10553-CII-2022

This is an application for recalling the order dated 17.08.2022 whereby the main revision petition has been dismissed.

Heard.

For the reasons stated in the application, the same is allowed and order dated 17.08.2022 is recalled. The main revision petition being CR-5025-2019 is restored to its original number and the same is taken up for hearing today itself.

CR-5025-2022 (O&M)

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 26.07.2019 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Dera Bassi 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 recovery and declaration to the effect that sale deed vide vasika No.15863 dated 13.01.2012 executed by defendant-respondent No.1 in favour of the plaintiff-petitioner is a sham document, based on concealment and misrepresentation of facts. The said suit was contested by the defendant-respondents by denying the averments made by the plaintiff-petitioner in the plaint. Thereafter, plaintiff-petitioner filed an application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 for appointment of a Local Commissioner to visit the spot for demarcating and verification of the property in dispute and report regarding the existing position of the property. The said application was contested by the defendant-respondents on the ground that the application is not maintainable and has been filed only at a belated stage of the case and that a Local Commissioner cannot be appointed to create evidence on behalf of the plaintiff-petitioner. Vide the impugned order dated 26.07.2019 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.

31.08.2022
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(ALKA SARIN)
JUDGE

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