

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.1009 of 2021

Date of Decision : 30.11.2022

Mandir Sarup Dass Ji Thakur Dwara

....Petitioner

VERSUS

S.D. Boys High School & Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H.P.S. Ghuman, Advocate for the petitioner.

Mr. Chanchal K. Singla, Advocate for the respondents.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 19.09.2019 dismissing the application of the petitioner for appointment of a Local Commissioner.

Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for permanent injunction for restraining the defendant-respondents, their agents, servants and attorneys from illegally and forcibly interfering in the peaceful possession of the plaintiff-petitioner over the *Mandir* and its surrounding properties and further for restraining the defendant-respondents from encroaching upon any part of the suit land by way of raising any sort of construction thereupon and further for restraining the defendant-respondents from causing any type of damage to the building.

During the pendency of the suit, after having led its evidence, the plaintiff-petitioner filed an application under Order XXVI Rule 9 CPC for appointment of a Local Commissioner for submitting a report about the actual and factual position at the spot. Reply was filed to the said application and vide the impugned order the said application was dismissed on the ground that it is for the plaintiff-petitioner to prove its case and that by

appointing a Local Commissioner the Court could not assist the plaintiff-petitioner in collecting the evidence.

Learned counsel for the petitioner would contend that for ascertaining the factual position at the spot the appointment of a Local Commissioner was necessary and the application has wrongly been dismissed by the Trial Court vide the impugned order dated 19.09.2019. In support of his arguments learned counsel for the petitioner has relied upon judgment of this Court in case of **M/s Allwin Infrastructure Limited, Panchkula vs. M/s MAXXUS Developers and Others, [2021(1) RCR (Civil) 177]** and that of the Hon'ble Supreme Court in cases of **Shreepat vs. Rajendra Prasad & Ors. [(2000) 7 JT 379]** and **Haryana Waqf Board vs. Shanti Sarup & Ors. [(2008) 8 SCC 671]**.

Per contra learned counsel for the defendant-respondents has contended that no revision is maintainable against the order dismissing an application for appointment of a Local Commissioner. It is further the contention that there exists no dispute regarding the boundaries. Learned counsel for the defendant-respondents has further contended that it is for the plaintiff-petitioner to establish its case and that it cannot take assistance of the Court for collecting the evidence by way of appointment of a Local Commissioner.

I have heard learned counsel for the parties.

In the present case the challenge is to the order dismissing an application for appointment of the 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.

The judgment relied upon by learned counsel for the plaintiff-petitioner in **M/s Allwin's case** (*supra*) would be of no avail inasmuch as in the said case the revision petition was filed against the order allowing an application for appointment of a Local Commissioner. The judgment relied upon by learned counsel for the petitioner in **Shreepat's case** (*supra*) would also not come to his aid inasmuch as it has been held in para 4 of the said judgment that before the Court decrees the suit the identity should have been established by issuing a survey commission. In the present case the plaintiff-petitioner is seeking appointment of a Local Commissioner for demarcation of the properties whereas the entire case of the plaintiff-petitioner in its plaint is for permanent injunction for restraining the defendant-respondents from interfering in its area. That being so, it is for the plaintiff-petitioner to prove its case and it cannot take aid of the Court for creating evidence for it. The judgment relied upon in **Shanti Sarup's case** (*supra*) would also be of no help to learned counsel for the plaintiff-petitioner inasmuch as in the said case the Hon'ble Supreme Court, while dealing with the case in which the regular second appeal was dismissed, has held that the Court should have directed the investigation by appointing a Local Commissioner since the

dispute was only regarding the demarcation of the land. In the present case *prima facie* there does not appear to be any dispute regarding demarcation of the land inasmuch as the suit simpliciter is for permanent injunction restraining the defendant-respondents from illegally and forcibly interfering into peaceful possession of the plaintiff-petitioner over the *Mandir* and its surrounding properties. The description of the properties has been detailed in the plaint.

In view of the above, I do not find any merits in the present revision petition, which is accordingly dismissed. Pending applications, if any, also stand disposed off.

30.11.2022
jk

(ALKA SARIN)
JUDGE

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