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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5092 of 2022 (O&M)

Date of Decision: 11.11.2022

Harpreet Singh

..... Petitioner

Versus

Gurpreet Kaur and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

MANJARI NEHRU KAUL J. (Oral)

The petitioner by filing the present petition under Article 227 of the Constitution of India is impugning the order dated 31.10.2022 (Annexure P-1), passed by the learned Civil Judge (Junior Division), Kharar, District SAS Nagar (Mohali), Punjab, whereby his application filed under Order 26 Rule 10 read with Section 151 of CPC for appointment of the Local Commissioner was dismissed.

Learned counsel for the petitioner *inter alia* submits that the impugned order suffers from patent illegality and has been passed without considering the facts in their right perspective. He submits that the trial Court while passing the impugned order failed to appreciate that the respondents had obtained *ex parte ad interim injunction* vide order dated 17.11.2021 by filing false affidavits and thus, playing fraud upon the trial

Court. Hence, the trial Court should have in the interest of justice, appointed a Local Commissioner to see through the fraud perpetuated upon the Court. He further submits that the appointment of the Local Commissioner thus, in the above circumstances, would have been necessary for just and effective adjudication of the case. He still further submitted that the factum of constructions could only be ascertained by the Local Commissioner, therefore, the trial Court should have gone ahead to appoint a Local Commissioner. Learned counsel lastly submitted that it is a settled principal of law that fraud vitiates every proceeding and when fraud is brought to the notice of the Court, it must endeavour to go to the route of the issue. In support thereof, learned counsel for the petitioner has placed reliance upon the judgment passed by Hon'ble the Supreme Court in **“A.V. Papayya Sastry and others vs. Government of A.P. and others”**, Civil Appeal Nos. 5097-5099 of 2004 and by this Court in **“Bhupinder Singh Vohra vs. State of Haryana and others”**, Civil Writ No.1710 of 1967.

I have heard learned counsel for the petitioner and perused the relevant material on record.

At the outset, it would be pertinent to notice here that the Division Bench of this Court in **“Pritam Singh vs. Sunder Lal”**, 1990 (2) **PLR 191**, has held that a revision against an order refusing to appoint a Local Commissioner would not lie as it is the discretion of the Court to appoint a commissioner and in case the Court refuses to appoint a commission, then, no right of any party can be said to have been prejudiced. Even otherwise, a party cannot be allowed to collect evidence

through the Court. Each party has to lead evidence in support of its case. The parties cannot certainly be allowed to lean on the Courts for the same. The case laws relied upon by learned counsel for the petitioner would not come to his rescue as they do not in any manner deal with the appointment of the Local Commissioner.

In the circumstances, no ground is made out to invoke the revisional jurisdiction of this Court under Article 227 of the Constitution of India. The instant petition being devoid of any merit is dismissed.

11.11.2022

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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No