

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

**CIVIL REVISION No.7517 of 2019 (O&M)
DATE OF DECISION : 21.04.2022**

Gainda Ram

....Petitioner

versus

Municipal Corporation, Gurgaon and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jain, Advocate for the petitioner

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ALKA SARIN, J. (Oral):

This is a revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 19.07.2019 passed by the Civil Judge (Junior Division), Gurgaon whereby application for additional evidence filed by the plaintiff-petitioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit praying for a decree of declaration to the effect that the plaintiff had already acquired occupancy rights in the land in question on account of long possession, usage and custom and has become owner thereof by operation of law and defendants have got no right, title or interest in the suit land and the revenue entries showing the

defendant-respondents in the column of ownership of land in question are incorrect and liable to be corrected. A written statement was filed by defendant-respondent No.1 and a separate written statement was filed by defendant No.36.

During the pendency of the suit, the plaintiff-petitioner filed an application praying therein for appointment of a Local Commissioner to demarcate the land in question and to report the existing state of affairs. The said application was contested by the defendant-respondents and vide order dated 01.05.2019 the Civil Judge (Junior Division), Gurugram dismissed the application for appointment of a Local Commissioner. The said order dated 01.05.2019 was challenged before this Court in CR-3480-2019 wherein on 24.05.2019 the following order was passed:

“Learned counsel for the petitioner states that he be permitted to withdraw the present revision petition granting him liberty to move application for additional evidence before the trial Court.

Permission is granted. The petition is dismissed as withdrawn.

However, on the revisionist plaintiff moving appropriate application for additional evidence, the same be disposed of as per law by the trial Court expeditiously.”

Subsequent, to the withdrawal of the said revision petition, an application for additional evidence was filed by the plaintiff-petitioner. Interestingly, the application for additional evidence was for appointment of a Local Commissioner. A perusal of the application, which has been appended as Annexure P-8 with the revision petition, reveals that the prayer in the said application was not for leading any additional evidence but was for appointment of a Local Commissioner by the Court by way of additional evidence. A reply was filed to the said application and the same was contested by the defendant-respondents and vide the impugned order dated 19.07.2019 the same was dismissed holding that the application tantamounts to collection of additional evidence on behalf of the applicant.

Learned counsel for the plaintiff-petitioner would contend that firstly in CR-3480-2019 vide order dated 24.05.2019 liberty was given to the plaintiff-petitioner to move an application for additional evidence before the Trial Court. The learned counsel would further contend that despite deletion of Order 18 Rule 17-A of the Code of Civil Procedure, 1908 (CPC) the Court has inherent power to permit additional evidence under Section 151 CPC. To buttress the said argument the learned counsel has relied upon **K.K. Velusamy vs. N. Palanisamy [(2011)11 SCC 275]**, **Harphool Singh & Anr. vs. Sh. Siri Ram & Ors. [2017(3) RCR (Civil) 615]**, **Manmohan Singh vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur & Ors. [2015(5) RCR (Civil) 661]**.

It is further the contention of the learned counsel that the appointment of the Local Commissioner was necessary for demarcation of the land in question and in such circumstances the Trial Court ought to have allowed the application and appointed the Local Commissioner for demarcation. In support of his argument the learned counsel has further relied upon **Haryana Waqf Board vs. Shanti Sarup & Ors. [(2008)8 SCC 671]**.

Heard.

In the present case, the question that arises is not whether additional evidence can be led or not before the Trial Court. Since the issue is no longer *res integra*, there can be no quarrel with the proposition that the Court has inherent power to permit additional evidence. The core question which needs to be addressed in the present revision petition is the second application for appointment of a Local Commissioner by changing the nomenclature of the application after an earlier application for appointment of a Local Commissioner was contested and stood dismissed vide order dated 01.05.2019 passed by the Trial Court. The said order was challenged in CR-3480-2019. The said CR-3480-2019 was withdrawn on 24.05.2019 with liberty to file an application for additional evidence. Thereafter, an application was moved for leading additional evidence. However, the application reveals that the same was not for leading additional evidence but was yet again for appointment of a Local Commissioner. The Trial Court, vide a detailed order dated 19.07.2019, dismissed the said application. There is

no quarrel with the argument raised by the learned counsel that the Court has inherent power to permit additional evidence despite deletion of the provisions of Order 18 Rule 17-A CPC. However, the fact remains that in the present case the plaintiff-petitioner had already filed an application for appointment of a Local Commissioner which was dismissed by a speaking order which was challenged before this Court in CR-3480-2019. The petitioner chose to withdraw the said revision petition with liberty to file an application for additional evidence. The application filed, thereafter, on the face of it, is not for leading additional evidence but yet again for appointment of a Local Commissioner which cannot be permitted. Once the earlier application stood rejected and the revision petition stood withdrawn there was no question of filing a second application, though cleverly drafted as an application for leading additional evidence.

In view of the above, I do not find any merit in the present revision petition.

Dismissed.

(ALKA SARIN)
JUDGE

21.04.2022
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NOTE:

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