

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 2946/2018

Date of decision:23/03/2023

Balvir @ Balbir

.....Petitioner.

Vs.

Karan Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Shashi Kumar Yadav, Advocate for the petitioner.

Mr. Shiv Kumar, Advocate for respondents 1 to 5.

Nidhi Gupta, J.

Present revision petition has been filed by the defendant no.2 for setting aside the order dated 20.4.2018 (Annexure P-5) passed by Civil Judge (Junior Division), Faridabad whereby application of the petitioner for appointment of Local Commissioner has been dismissed.

It is submitted by the ld. Counsel for the petitioner that respondents/plaintiffs had filed a suit for permanent injunction against the petitioner as well as defendant no. 1/ proforma respondent no.6 herein. It is submitted that it is pleaded case of the defendants that they are in exclusive possession of the suit land as per their respective share and that the plaintiffs/respondents are not in possession of any portion of the suit land. In order to prove their possession over the suit property, respondents/plaintiffs had produced some electricity bills. It is the case of the petitioner/ defendant no.2 that the said electricity bills pertain to some other property, as on the

suit land the electricity connection is in the name of the proforma respondent no.6 and Manoj, son of petitioner/defendant no.2. It is submitted that accordingly, the petitioner had filed the instant application seeking appointment of Local Commissioner to disprove the false claim of the respondents/ plaintiffs. It is submitted that appointment of Local Commissioner is necessary for proper adjudication of the matter and will help to clarify the issue expeditiously. It is stated that properties in the villages do not bear house numbers and therefore, appointment of Local Commissioner is necessary to give a report as to whether the petitioner's meter is on the suit property or somewhere else. It is submitted that the petitioner is ready to bear the expenses if the Local Commissioner is appointed. In support, learned counsel for the petitioner relies upon judgment of the Hon'ble Supreme Court in **Haryana Waqf Board v Shanti Sarup and others**, Law Finder Doc Id # 187552 and of this Court in **Banarsi Das v Sardha Ram and others (2015) 4 Law Herald 3532**.

In response, it is submitted by the ld. Counsel for respondents 1 to 5 that the present revision petition is not maintainable in view of judgment of this Court in **Banarsi Dass v Sunita Rani @ Sarita Rani and others**, Law Finder Doc Id # 827241, wherein it has been held that order appointing or dismissing application for appointment of Local Commissioner is not revisable.

Heard ld. Counsel for the parties.

Perusal of the impugned order shows that the ld. Trial court has dismissed petitioner's application for the following reasons:-

"4. Defendant is seeking appointment of a local commission to disprove the case of the plaintiff which he has allegedly proved by placing wrong electricity bills of some other property on file alleging that to be of the suit property. It is significant to mention that this is a suit for permanent injunction which has been filed by the plaintiff between the children of Netram. Plaintiff is seeking a relief of permanent injunction restraining the defendant from interfering into his peaceful possession. However, the stand of the defendant in his written statement is that defendant no. 1 is in exclusive possession of the suit property and plaintiffs are not in possession thereof. The stand of the defendant is that defendant no. 1 and 2 purchased the suit property vide a registered sale deed dated 14.7.1962 and since then they are in possession. On the other hand the version of the plaintiff is Netram was lessee in possession and after his death parties to this suit are in possession of the property of their respective share. However, the version of the defendant is that they purchased the property in question vide a registered sale deed. In such circumstances there is absolutely no necessity of appointment of local commission. Moreover the Instrumentality of court cannot be used for the purpose of collecting evidence on behalf of either party. Significantly this application has been moved after sufficient opportunities for evidence on behalf of defendant have already been availed. This appears to be a delaying tactics designed to delay the progress of the suit pertains to the year 2014. Therefore, in view of the afore-said discussion, the application is hereby dismissed".

I am in agreement with the above said reasoning of the trial

Court to the effect that instrumentality of Court cannot be used to collect

evidence on behalf of either party. Moreover, it is a well-established position in law that orders allowing appointment, or rejecting appointment, of Local Commissioner, are not amenable to revisional jurisdiction. It has been held by two Division Benches of this Court in **Harvinder Kaur v Godha Ram, 1979 PLJ 562** and **Pritam Singh v Sunder Lal, 1990(2) PLR 191**, that Revision Petition is not maintainable against an order of the Trial Court dismissing or allowing an application for appointment of Local Commissioner.

It is the consistent position in law, that an order refusing to appoint Local Commissioner does not decide any issue nor adjudicates any right of the parties for the purpose of the suit and therefore, is not revisable. Refusing to appoint, or appointing a Commissioner has nothing to do with the rights of the parties and it is purely the discretion of the Court. If the Court refuses to appoint, or appoint, a Local Commissioner, no right of the parties is prejudiced.

As regards the case law relied upon by the Id. Counsel for the petitioner, the same is not applicable in the facts and circumstances of the present case. Issue in both the relied upon cases was demarcation of suit land. Admittedly, that is not so in the present revision petition.

Resultantly, finding no merit in this revision petition the same is hereby **dismissed**.

23/03/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No