

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

CR 533/2020(O&M)

Date of decision: 06.01.2023

Balwinder Kumar & Others

.....Petitioners.

Vs.

Om Parkash & others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok Kumar Khunger, Advocate for the petitioners.

Nidhi Gupta, J.

Prayer in the present revision petition is for setting aside order dated 25.11.2019 (Annexure P-4) passed by the Civil Judge (Junior Division) Abohar whereby, the application filed by the petitioners/plaintiffs under Order 26 Rule 9 CPC for appointment of Local Commissioner with directions to visit the spot and to report regarding location of the property, which is being occupied by the respondent No. 1/defendant no.1, has been dismissed.

Brief facts of the case are that petitioners along with proforma respondents filed a suit for possession in respect of suit property situated in a part of khasra no.358, khewat no.8/7, khatoni no.11 situated at Village Kular,

Tehsil Abohar, allegedly owned by plaintiffs and illegally occupied by respondent No. 1/ defendant no.1, and for permanent injunction restraining the defendant no.1 from raising any type of construction in the suit property.

It is pleaded case of the petitioners that they are recorded as owners of the property in question in the Jamabandi for the year 2013-14. However, respondent no.1/defendant no.1 was stated to be illegally and wrongly occupying part of the property in question.

It is submitted by the learned counsel for the petitioners that property in question is owned by the petitioners and proforma respondents, and forms part of khasra no.358, however, part of the suit property has been illegally occupied by respondent no.1. It is further submitted that even in the written statement to the suit filed by respondent no.1 he has only stated that he is occupying a plot in the residential area of Village Kular since the lifetime of his father, and respondent no.1 has nowhere mentioned in his written statement the khasra number of the plot which is in his possession. It is submitted that the question whether respondent no.1 is in possession of khasra no.358 which is owned by the petitioners can only be determined by the Revenue Authorities by carrying out demarcation. It is submitted that accordingly, for the just and proper adjudication of the matter demarcation was required to be conducted by the Revenue Authorities and therefore, the learned Trial Court is in error in dismissing the petitioners' application for appointment of Local Commissioner. Reliance has been placed upon the law laid down in '**Punjab Wakf Board, Ambala Cantt v Shri Neeko**', 2004(3) RCR (Civil) 506 and '**Smt.Puran Dassi v Suresh Kumar Sharma**', 2018(2) Civil Court Cases 802 (H.P.). It is further submitted by the learned counsel for the petitioner that since respondent No. 1 has disputed the identity of the

property, therefore, appointment of Local Commissioner is essential. It is simultaneously contended that prayer of the petitioner was for demarcation of the property and not for appointment of Local Commissioner. However, a perusal of the application filed by the petitioners under Order 26 Rule 9 CPC shows the same to be an “*Application for appointment of Local Commission with directions to visit the spot and to report regarding location of property which is being occupied by the defendant no.1*”.

Upon notice, Sh.K.B.Raheja, Advocate has put in appearance on behalf of respondent no.1 and has filed his Vakalatnama which is taken on record.

Learned counsel for respondent no.1 relies upon law laid down by this Hon’ble Court in **Deva Singh v Mohinder Singh and others, 2022(3) RCR (Civil) 444; Santokh Singh and others v Majinder Singh and others, 2020(4) RCR (Civil) 155; Surinder Singh v Bimal Kumar and another, 2017(3) Law Herald 2336; Hari Singh v Baljjeet Singh and others, 2017(3) RCR (Civil) 167; Prem Chand v Randhir Singh, 2017 (3) RCR (Civil)167; Smt.Raksha Devi v Madan Lal and others, 2017(2) Law Herald 1232; Reepu Daman @ Ripu Daman v Baldev Singh and another, 2017(2) PLR 434; Harbhajan Singh and another v Gurmail Singh and others, 2015(9) RCR (Civil) 163; Rajiv Kumar Batra v Kashmiri Lal Sikka, 2010(6) RCR (Civil)37; Sumer Chand Jain v Vishnu Bhagwan Mangla, 2006(2) RCR (Civil) 445; Pritam Singh and another v Sunder Lal and others, 1991(1) R.R.R. 356; Samanvay Bhutani v Azad Singh Kataria, Law Finder Doc Id # 1397463; and Jain Instruments and Equipment v Davinder Singh, 2014 (4) RCR (Civil) 338** to submit that when an application for appointment of Local Commissioner is rejected,

revision petition is not maintainable. Ld. counsel also refers to the averments made in the plaint, in para 3 in particular, to submit that the same are vague and general. It is further submitted that the petitioner should have first approached the Revenue Authorities and obtained demarcation to identify the suit property and then filed the present Civil Suit.

Heard learned counsel for the parties.

I find merits in the arguments advanced by the learned counsel for the respondent No. 1.

It is well established position in law that where an application for appointment of Local Commissioner has been rejected by the Courts below, such orders 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 passed by the Trial Court dismissing application for appointment of Local Commissioner. Therefore, the petitioners can derive no benefit from the relied upon judgments.

It is the consistent position in law, that an order refusing to appoint Local Commissioner does not decide any issue nor adjudicate any rights of the parties for the purpose of the suit and therefore, are not revisable. Refusing to appoint 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 a Local Commissioner, no right of the parties is prejudiced. It is further an established position in law that parties have to adduce their evidence and Courts cannot be used as an instrument to collect evidence on behalf of the parties.

For the reasons stated above, finding no merit in this revision
petition the same is hereby dismissed.

Pending application(s), if any, also stand disposed of
accordingly.

06.01.2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No