

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 778/2023

Date of decision:06/02/2023

Som Parkash @ Som Dass and another

.....Petitioners.

Vs.

Ram Chand and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok Kumar Khunger, Advocate for the petitioners.
 Ms. Rishu Madan, AAG Punjab for official respondents.

Nidhi Gupta, J.

Prayer in the present revision petition is for setting aside the order dated 4.1.2023 (Annexure P-4) passed by Ld. Addl. Civil Judge (Senior Division), Abohar, whereby the ld. Trial Court has *suo motu* appointed Halqa Kanungo as Local Commissioner to report whether any part of the passage, comprised in Khasra No.786 and 787 situated in the area of Village Gidderanwali, Tehsil Abohar, District Fazilka – which is subject matter of the dispute - has been encroached upon by the petitioners/defendants and proforma respondent no.9.

Facts in brief are that plaintiffs/ respondents No. 1 and 2 herein, filed a suit for mandatory injunction against the petitioners/ defendants and proforma respondents to remove the encroachment upon the passage, as detailed in para 1 hereinabove.

Upon notice, petitioners/defendants appeared and filed their detailed written statement (Annexure P-2) specifically pleading therein that they have not encroached/blocked the above said rasta/passagage and that the rasta /passage in dispute was running at the spot. To the similar effect was the written statement (Annexure P-3) filed by Gram Panchayat-defendant no.8/respondent no.6 herein.

After pleadings were complete, parties led evidence in support of their respective stand and arguments were heard, when the learned Trial Court, *suo moto* passed the impugned order dated 4.1.2023 (P-4). Hence, the present revision petition.

Learned counsel for the petitioners submits that the parties to the suit having led evidence in support of their respective stand, there was no occasion for the Trial Court to appoint Local Commissioner. It is further submitted that it is an established position in law that parties have to adduce their evidence and Courts cannot be used as an instrument to collect evidence on their behalf. Cites judgment rendered by this Court in **CR 533/2020, decided on 6.1.2023 titled Balwinder Kumar and Others v Om Parkash and others.**

Per contra, learned counsel for the respondents/ plaintiffs submits that respondents/defendants 7 to 9 have encroached/blocked the rasta/passagage shown with red colour in the site plan attached with the plaint with a motive to cause wrongful loss to the plaintiffs and other people of the

village. It is further submitted that the suit was filed in the year 2018 and prior to the filing of the suit plaintiff no.1 had moved an application on 11.1.2017 for demarcation of the passage and vide demarcation rapat no.310 dated 10.5.2017, it transpired that defendant nos. 7 to 9 have encroached/blocked the rasta/passageway without any right to do so. It is thus submitted that for just, proper and final decision of the case, the learned Trial Court has rightly appointed Local Commissioner.

Heard Ld. Counsel for the parties.

A perusal of the impugned order (Annexure P-4) shows that learned Trial Court has observed therein that as per evidence on record there is one demarcation report regarding Khasra no.786 Ex. PX only and even in the above report it has not been mentioned that whether there is any encroachment on the part of defendants 7 to 9 or not. It has further been observed that in order to ascertain actual and factual position at the spot for the purpose of proper adjudication and final resolution of the dispute and in order to ascertain alleged encroachment by defendants in Khasra nos. 786 and 787, appointment of Local Commissioner is required.

In this view of the matter, in my considered opinion, there is no error in the well-reasoned order passed by the Ld. Trial Court.

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 passed by 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 adjudicate any rights 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 appoints a Local Commissioner, no right of the parties is prejudiced. The petitioners can derive no benefit from the relied upon judgment in **Balwinder Kumar’s** case (supra) as the petitioner is attempting to read it piecemeal, whereas a complete reading of the same shows that the basic principle enunciated therein is the same as stated hereinabove.

Reference in this regard may also be made to judgment of this Court in **Bhag Chand v Ram Chander and another, bearing CR No.6350/2016 decided on 6.10.2017**, wherein the revision petition was filed against an order whereby application for appointment of Local Commissioner had been allowed. The said revision petition was dismissed by holding that the order was not revisable in nature as no substantial right *inter se* the parties is adjudicated by such an order.

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

06/02/2023	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No