

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CR No.1794 of 2020 (O&M)
Date of Decision : 12.01.2023**

Hawa Singh

....Petitioner

VERSUS

Shri Bhagwan and Another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rahul Makkar, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been preferred against order dated 18.09.2018 whereby the application filed by the plaintiff-petitioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908(for short 'CPC') for appointment of a Local Commissioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for permanent injunction and mandatory injunction on the ground that he is owner in possession of Plot No.13 vide registered Transfer Deed No.4869 dated 16.07.2014 and has built a house over the said plot since the date of its purchase and covered 84 square yards thereof. He is using rest of the part of plot in question for his different household purposes. It has further been averred in the plaint that since the purchase of the said plot, the plaintiff-petitioner has been in peaceful possession and enjoying the suit property without any let or hindrance from anybody by exercising all the rights of ownership. It has also been averred in the plaint that the plaintiff-petitioner has been paying the house tax and bills to the Government authorities. Plaintiff-petitioner has also stated in the plaint that the defendant-respondents want to raise construction towards the suit property

without leaving any set back as prescribed by law thereby depriving the plaintiff-petitioner of his legal easement right.

During the pendency of the suit, the plaintiff-petitioner filed an application under Order XXVI Rule 9 CPC for appointment of a Local Commissioner. The said application was filed on account of the fact that the plaintiff-petitioner wanted to raise construction over the suit property but the defendant-respondents were interfering in the peaceful possession of the plaintiff-petitioner and making encroachment over the suit property. The said application was contested by the defendant-respondents and the same was dismissed vide the impugned order dated 18.09.2019. Hence, the present revision petition.

Learned counsel for the petitioner would contend that the appointment of a local commissioner is necessary to determine the controversy in question.

I have heard learned counsel for the plaintiff-petitioner.

In the present case the plaintiff-petitioner has approached the Court by filing a suit for permanent injunction and mandatory injunction on the ground that he is owner in possession of Plot No.13 vide registered Transfer Deed No.4869 dated 16.07.2014. The suit is still at the initial stage inasmuch as the evidence of the plaintiff-petitioner is yet to commence. At this stage, an application was filed by the plaintiff-petitioner for appointment of a Local Commissioner on the ground that report *qua* the existing state of affairs over the suit property is required. The plaintiff-petitioner in the present case is yet to prove his case by leading evidence. What in fact the

plaintiff-petitioner is wanting is for the Court to collect evidence for him, which cannot be permitted.

A Division Bench of this Court in the case of **Pritam Singh & Anr. vs. Sunder Lal & Ors. [1990 (2) PLR 191]** inter-alia held as under :

“6. After getting through the Judgments cited in the reference order, we do not find that the earlier Judgment in Harvinder Kaur’s case (supra) requires any re consideration. The order refusing to appoint a local commissioner does not decide any issue, nor adjudicates rights of the parties for the purpose of the suit and is, therefore, not revisable. The distinction sought to be made by the learned Single Judge in view of the Judgment in M/s Sadhu Ram Bali Ram’s case (supra) was clearly noticed by the Division Bench in Harvinder Kaur’s case (supra) and it was observed :

“It may be observed that the facts of M/s Sadhu Ram Bali Ram’s case were different as in that case the onus of an issue had been wrongly placed and while deciding that question, it was held that such an order would be revisable.”

Apart from that, placing the onus of an issue has something to do with the rights of the parties whereas refusing to appoint a Commission under Order 26, Rule 9, Code of Civil Procedure, has nothing to do with the rights of the parties as such. It is the discretion of the

Court to appoint a Commission there under and if the Court refuses to appoint a Commission, then no right of any party can be said to be prejudiced as such.”

Similar view has been taken by this Court in the case of **Smt. Raksha Devi Vs. Madan Lal & Ors. [2017 (3) PLR 249]** wherein it has categorically been held that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner. It is trite that an order refusing to appoint a Local Commissioner does not decide any issue nor does it adjudicate any rights of the parties for the purpose of the suit and hence would not be a revisable order.

In view of the law laid down by the Division Bench of this Court in case of **Pritam Singh (supra)** holding that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner as the order refusing to appoint a Local Commissioner does not decide any issue nor does it adjudicate any rights of the parties for the purpose of the suit, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

12.01.2023
jk

(ALKA SARIN)
JUDGE

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