

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 3569/2019

Date of decision:21/02/2023

Rakesh Chander Sood

.....Petitioner.

Vs.

Smt.Prem Latta

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. PS Thiara, Advocate for the petitioner.
 Mr. Arun Bansal, Advocate for the respondent.

Nidhi Gupta, J.

Plaintiff/petitioner in this Revision Petition u/Article 227 of the Constitution has prayed for setting aside the order dated 26.2.2019 (Annexure P/1) by which his application for appointment of any Revenue Expert for demarcation of Khasra No.867 has been dismissed.

Facts in brief are that the plaintiff filed a Civil Suit for possession as owner of the shop ABCD shown in red colour in the site plan attached with the plaint, situated at Adda Mahilpur, at Hoshiarpur, on the basis of registered sale deed dated 16.5.1959, being part of Khasra no.867.

Respondent/defendant in her written statement categorically denied that the shop in dispute was part of Khasra no.867. In these circumstances, petitioner filed an application dated 2.11.2018 (Annexure P-4), for appointment of any Revenue Expert for demarcation of Khasra no.867 and to report as to whether the shop shown in the site plan is part of Khasra no.867. Defendant/respondent filed reply to the said application. Ld. Trial Court vide impugned order Annexure P-1, after hearing the ld. Counsel for the parties, dismissed the said application of the petitioner. Hence, the present revision petition.

It is submitted by the learned counsel for the petitioner that appointment of Revenue Expert is necessary for just, proper and final adjudication of the *lis* and hence, the trial court is in grave error in dismissing the application of the petitioner.

Per contra, learned counsel for the respondent submits 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. Ld. Counsel for respondent 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.**

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

A perusal of the impugned order (Annexure P-1) shows that learned Trial Court has observed therein that “..... *as the instant suit is filed by the plaintiff/applicant for possession, therefore, the identity of the property is to be proved by plaintiff by leading cogent and convincing evidence.*”

Moreover, it is not the case of encroachment for which the demarcation of property is necessary. The identity of the property is to be established by plaintiff”.

I am in concurrence with the above-said views expressed by the learned Trial Court. In my view, there is no error in the reasons cited by the Id. Trial Court in passing the impugned order.

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.

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

21/02/2023
Joshi

(Nidhi Gupta)
Judge