

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**310****CR No.4101 of 2019 (O&M)
Date of Decision : 27.03.2023**

Lom Dutt (Deceased) through his LRs

....Petitioners

VERSUS

Kartare and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravi Kumar Gupta, Advocate for the petitioners.

Mr. R.K. Girdhwal, Advocate for respondent Nos.1 to 8.

Mr. Parveen Kaushik, Advocate
for applicant-respondent No.5 in CM-16057-CII -2022.**ALKA SARIN, J. (Oral)**

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 20.05.2019 passed by the Trial Court.

The brief facts relevant to the present *lis* are that in the present suit for permanent injunction, earlier a Local Commissioner was appointed by the Court who submitted his report. Both the counsel stated at the bar before the Trial Court on 09.05.2016 that they did not want to file any objections to the report. Thereafter, an application was filed for appointment of a Local Commissioner by the respondent herein. A reply was filed to the said application and vide the impugned order dated 20.05.2019 the said application was allowed.

Learned counsel for the petitioners would contend that once there is already a report by the Local Commissioner, the second report from the second Local Commissioner could not have been called except if the

Court held that the first report was erroneous or that some new facts need to be ascertained or that some clarification was required. In support of his argument, he has relied upon a judgment of this Court in the case of **Roshan Lal vs. Jai Singh & Ors. [2015 (4) RCR (Civil) 1032]**.

Learned counsel for the respondents has contended that the report by the first Local Commissioner was not prepared in the presence of the respondents and even does not pertain to the suit property and hence the necessity of the second Local Commissioner.

Heard.

In the present case, undisputedly, a Local Commissioner was appointed and a report was also submitted. Both the counsel for the parties stated at the bar that they did not wish to file any objections to the report submitted by the first Local Commissioner. The application filed by the respondents for appointment of another Local Commissioner does not state as to why the appointment of a second Local Commissioner was necessary despite a Local Commissioner having been appointed earlier. In fact the said application does not even advert to the fact that earlier a Local Commissioner had been appointed; that a statement had been made that the parties did not wish to file any objections to the report submitted; or even give any reasons as to why the necessity for appointment of a second Local Commissioner had arisen. A perusal of the impugned order dated 20.05.2019 also reveals that the same is totally silent regarding the report submitted by the first Local Commissioner. Without first coming to a conclusion as to whether the first report given is erroneous in any manner or that any further clarification was required, a second Local Commissioner could not have been appointed.

In view of the above, the present revision petition is allowed.

The impugned order dated 20.05.2019 is set aside and the matter is remanded to the Trial Court for deciding the application for appointment of a second Local Commissioner afresh in accordance with the law.

Disposed off in the above terms. Pending applications, if any, also stand disposed off.

27.03.2023
jk

(ALKA SARIN)
JUDGE

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