

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2871 of 2021

Date of Decision : 16.01.2023

Sukhdev Sharma

....Petitioner

VERSUS

Dinesh Kumar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.K.S.Phoolka, 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 13.10.2021 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 for restraining the defendant-respondent from interfering in the exclusive possession of the plaintiff-petitioner and from taking illegal and forcible possession of the plot measuring 206 sq. yards i.e. 2/29 share of 1 Bigha 9 Marlas comprising in Khewat/Khatauni No.3198/16869, bearing Khasra No.4764 min (1-9) and 2/40 share of 2 Bighas comprising in Khewat/Khatauni No.3198/16802, 16863, 16866 bearing Khasra Nos.4764 min (2-0). The defendant-respondent filed a written statement taking the plea that the plaintiff-petitioner is not in possession of any portion of the suit land and that the suit land is in possession of the defendant-respondent since 1979. The plaintiff-petitioner filed a replication reiterating the averments made in the plaint.

During the pendency of the suit, the plaintiff-petitioner filed an application under Order XXVI Rule 9 CPC for appointment of a Local Commissioner for ascertaining the factual position at the spot and physical possession of the parties over the suit property. The defendant-respondent did not appear and was proceeded against *ex parte*. The application was dismissed by the Trial Court vide the impugned order. Hence, the present revision petition.

Learned counsel for the petitioner would contend that the appointment of a local commissioner is necessary in order to determine the factual position at the spot and physical possession of the parties over the suit property.

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 for restraining the defendant-respondent from interfering in the exclusive possession of the plaintiff-petitioner and from taking illegal and forcible possession of the plot in dispute. 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 factual position at the spot and physical possession of the parties 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.

Further the challenge is to the order dismissing the application for appointment of a Local Commissioner. 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.

(ALKA SARIN)
JUDGE

16.01.2023
jk

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