

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.5729 of 2022 (O&M)
Date of Decision: 23.01.2023**

Parveen Goyal and another

.....Petitioners.

Versus

Raghubir Singh

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Aashish Chopra, Senior Advocate with
Mr. Vaibhav Sehgal, Advocate and
Ms. Mehar Nagpal, Advocate
for the petitioners.

MEENAKSHI I. MEHTA, J.

By way of the instant revision petition, the petitioners-defendants (here-in-after to be referred as 'the defendants') have laid challenge to the order dated 14.11.2022 (Annexure P-7) passed by learned Civil Judge (Junior Division), Ludhiana (for short 'the trial Court'), in Civil Suit No.910 of 2021, whereby the application (Annexure P-5) moved by them under Order 26 Rule 9 read with Section 151 CPC for seeking the appointment of the Local Commissioner, has been dismissed.

2. I have heard learned Senior counsel for the defendants in the present revision petition, at the preliminary stage and have also perused the file carefully.

3. Learned Senior Counsel for the defendants has contended that the parties to the above-said Civil Suit have put-forth different versions in

their respective pleadings regarding the area of the suit property and the controversy between them on this point can be settled by appointing the Local Commissioner, while directing him to visit the said property and to submit his report qua the same. To buttress his contentions, he has placed reliance upon the observations made in Harvinder Kaur etc. Versus Godha Ram etc. I.L.R. Punjab and Haryana (1979)1, 147 (DB); John Versus Kamarunnissa 1989 AIR (Kerala) 78; Shreepat Versus Rajendra Prasad and Others 2001(2) Land L.R. 293 (SC); Rajesh Versus Ramkishan 2002(3) ALL MR 881 (Bombay); Hari Om Versus Minish Kumar 2005(28) R.C.R. (Civil) 379 (P&H); Mukund Lal Versus Sharada Bai and Others 2005(29) R.C.R. (Civil) 235 (AP); Gurdial Singh and Another Versus S. Avtar Singh and Others 2009(41) R.C.R. (Civil) 538 (P&H); Varala Ramachandra Reddy Versus Mekala Yadi Reddy 2010(43) R.C.R. (Civil) 295 (AP); Deepak Narula Versus Shri Satruhan Dwivedi and Others 2013(33) R.C.R. (Civil) 255 (P&H); Shyam Janardan Chaoudary Versus Asha Ramdas Katkar 2014(61) R.C.R. (Civil) 140 (Bombay); Banarasi Das Versus Sardha Ram and Others 2015(9) R.C.R. (Civil) 590 (P&H); New Meena Sahkari Awas Samiti Ltd. Lko Thru its President Versus Addl. District Judge, Ct. No.2 Lko and Others 2016(2) A.R.C. 133 (Allahabad); Mundladinne Gopal Reddy Versus P. Ramachandra Reddy 2016(5) A.L.T. 728 (Telangana and Andhra Pradesh High Court); M/s Allwin Infrastructure Limited, Panchkula Versus M/s MAXXUS Developers and Others 2021(1) R.C.R. (Civil) 177 (P&H) and Jitender alias Leela Versus Rashma 2022(1) Law Herald 178 (P&H).

4. However, the afore-raised contention is devoid of any force because in their application Annexure P-5, the defendants have prayed for the appointment of the Local Commissioner with the direction to him to submit the report on the following points:-

- (i) *Area of the suit property,*
- (ii) *The particulars/details of the electric connection(s) used for supply of electricity to the suit property,*
- (iii) *The purpose for which the suit property is being used and by whom ,*
- (iv) *Who locks and opens the suit property*

and also for the following purposes:-

- (v) *To prepare a site plan of the suit property with the help of a Draftsman*
- (vi) *To get the photographs of the suit property clicked/taken by the photographer.*

5. As regards the area of the suit property, the respondent-plaintiff has specifically mentioned the boundaries and dimensions of the same in the plaint Annexure P-1 and in their written statement Annexure P-2, the defendants claim to have entered into an agreement to sell in respect of this property on 08.02.2008 and the said agreement, though not placed on the file by them (defendants), is supposed to be containing the categorical details of the boundaries and dimensions of the subject matter thereof and therefore, there would be no necessity to seek the report from the Local Commissioner in respect thereof.

6. So far as the remaining above-said purposes are concerned, the appointment of the Local Commissioner for the same would certainly amount to collecting the evidence for the defendants and rather, these facts are to be ascertained by the trial Court after appreciating and evaluating the evidence, as may be led by both the parties on the record in support of their respective contentions qua the same and the Local Commissioner cannot be delegated the power of the trial Court for the said purpose.

7. The observations made by the Division Bench of this Court in **Harvinder Kaur etc (supra)** do not help the defendants at all as it has categorically been held therein that “*an order refusing to appoint a Local Commissioner does not decide any issue nor does it adjudicate any right or obligation of the parties for the purpose of the suit and is, therefore, not revisable*” and rather, these observations hit the very maintainability of this revision petition before this Court.

8. Then, the judgments rendered by the Single Benches of the respective High Courts in **John (supra)**, **Rajesh (supra)**, **Hari Om (supra)**, **Mukund Lal (supra)**, **Gurdial Singh and another (supra)**, **Varala Ramachandra Reddy (supra)**, **Deepak Narula (supra)**, **Shyam Janardan Chaoudary (supra)**, **Banarasi Das (supra)**, **New Meena Sahkari Awas Samiti Ltd. Lko Thru its President (supra)**, **Mundladinne Gopal Reddy (supra)**, **M/s Allwin Infrastructure Limited, Panchkula (supra)** and **Jitender alias Leela (supra)** would also be of no avail to the defendants in view of the afore-cited observations made by the Division Bench of this Court in **Harvinder Kaur etc (supra)**.

9. So far as the verdict rendered by the Apex Court in **Shreepat** (**supra**) is concerned, the same also does not further the cause of the defendants because in the above-noted case, there was a serious dispute between the parties as to whether the suit property was comprised in Khasra No.257/3 or in 257/1, i.e regarding the identity of the same whereas it is not so in the instant case.

10. In view of the fore-going discussion, this Court is of the considered opinion that the impugned order does not suffer from any infirmity, illegality, irregularity or perversity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being bereft of any merit, stands dismissed.

January 23, 2023
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>