

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6734 of 2023
Date of Decision: 09.11.2023

Dharampal (deceased) through his LRs

...Petitioner

Versus

Parkash and others

...Respondents

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

Present:- Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate
for the LRs of the petitioner.

MEENAKSHI I. MEHTA, J. (Oral)

By way of the instant revision petition, the LRs of the petitioner-plaintiff (for short 'the LRs of plaintiff') have laid challenge to the order (Annexure P-6) passed by learned Additional Civil Judge (Senior Division) Jind (for short 'the trial Court') in the Civil Suit bearing No.947 of 2016 titled as '*Dharampal Vs. Parkash and others*' on 11.10.2023, whereby the application (Annexure P-4) moved by them with the prayer to appoint the Local Commissioner, has been dismissed.

2. I have heard learned counsel for the LRs of the petitioner-plaintiff, at the preliminary stage, in the present revision petition and have also perused the file carefully.

3. Learned counsel for the LRs of the plaintiff contend that the respondents-defendants (for short 'the defendants') had encroached upon

the house of the plaintiff (since deceased) and therefore, he (plaintiff) filed the above-said Civil Suit for seeking the possession thereof and the report of the Local Commissioner would bring the actual existing position of the suit property on the record for the proper decision of the said Suit but vide the impugned order, learned trial Court has wrongly dismissed the aforementioned application and hence, this order deserves to be set-aside. To buttress their contention, they place reliance upon the judgment Annexure P-7 handed down by the Co-ordinate Bench on 04.01.2023 in ***CR No.4443 of 2022*** titled as '***Phoola Devi @ Phula Devi vs. Banwari Lal***'.

4. However, the above-raised contention is devoid of any merit because the plaintiff filed the Civil Suit under reference for seeking the possession of the suit property while averring that the defendants had illegally taken the possession thereof. It being so, it was entirely for the plaintiff/his LRs to lead cogent and sufficient evidence on the record so as to prove the afore-discussed averment for substantiating his/their claim and it is well-settled that the Court cannot collect the evidence for any of the parties to establish his/her pleas. Moreover, as mentioned in the impugned order, application Annexure P-4 was moved when the above-said Suit had reached at the stage of recording the rebuttal evidence and hearing final arguments, meaning thereby that the LRs of the plaintiff have already concluded their evidence in affirmative and the defendants have also closed their evidence.

5. To add to it, the Division Bench of this Court has observed in ***Pritam Singh and another vs. Sunder Lal and others, 1990 PLJ 418*** that

“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” and in the light of these observations, it becomes explicit that the instant petition is not maintainable and the observations as made by the Co-ordinate Bench in judgment Annexure P-7 would also be of no help to the LR's of the plaintiff.

6. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity, so as to call for any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

09.11.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No