

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6804 of 2023

Date of Decision: 14.11.2023

Raju Masih

...Petitioner

Versus

Salamat Masih

...Respondent

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

Present:- Mr. Sukhwinder Singh Kamboj, Advocate
 for the petitioner.

MEENAKSHI I. MEHTA, J. (Oral)

By way of the instant revision petition, the petitioner-defendant has invoked the jurisdiction of this Court under Article 227 of the Constitution of India to lay challenge to the order (Annexure P-7) passed by learned Civil Judge (Junior Division), Batala, District Gurdaspur (for short 'the trial Court') on 15.09.2023, whereby application Annexure P-5 moved by him for seeking the appointment of the Local Commissioner in Civil Suit No.1048 of 2018 titled as '*Salamat Masih vs. Raju Masih*', has been dismissed.

2. I have heard learned counsel for the petitioner-defendant in the present revision petition, at the preliminary stage and have also gone through the file carefully.

3. Learned counsel for the petitioner-defendant contends that the petitioner is a co-sharer in the suit property and has spent a huge amount in raising the construction on the portion thereof, which had fallen to the share of his father but the respondent-plaintiff has placed an incorrect site-plan of the same on the record before the trial Court and in such circumstances, the report

of the Local Commissioner could depict the actual existing position of the suit property at the spot but however, vide the impugned order, the trial Court has erroneously dismissed the afore-said application (Annexure P-5).

4. Concededly, the respondent-plaintiff has filed the above-referred Civil Suit for seeking a decree for permanent injunction for restraining the petitioner from interfering in his possession over the suit property and raising any construction therein and it being so, it is entirely for the respondent to adduce cogent and sufficient evidence to substantiate his claim in the said Suit and it is also exclusively for the petitioner to lead trustworthy evidence on the record to establish the assertions, as set-forth by him in his written statement and also to controvert/falsify the evidence, as may be led by the respondent to prove his averments as canvassed in his plaint. It is well-settled that the Local Commissioner cannot be appointed for collecting the evidence for any of the parties to the litigation.

5. To add to it, the instant petition is not maintainable in view of the observations made by the Division Bench of this Court in **Pritam Singh and another vs. Sunder Lal and others, 1990 PLJ 418** to the effect 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*”.

6. In view of the fore-going discussion, it follows that the revision petition in hand, being *sans* any merit, deserves dismissal, Resultantly, the same stands dismissed accordingly.

14.11.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes