

CR-7370 of 2023

2023:PHHC:158940

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

CR-7370 of 2023

Date of decision: 12.12.2023

Chander Singh

.....Petitioner

Versus

Parveen Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Amit Arora, Advocate,
for the petitioner.

NAMIT KUMAR, J.

1. Instant revision petition has been preferred under Article 227 of the Constitution of India for setting aside order dated 10.05.2023 (Annexure P-1) passed by the Court of learned Civil Judge (Junior Division), Bhiwani, whereby application filed by the petitioner-plaintiff for appointment of Local Commissioner, has been dismissed.

2. Brief facts, leading to the filing of the present revision petition are that petitioner-plaintiff filed a suit for declaration to the effect that he is a cultivator in the land measuring 8 kanals comprised in khewat No.1746 min khatoni No.2015 khasra and killa No.383//16 (8-0) as per jamabandi for the year 2017-18 situated within Mauja Baliyali, Tehsil Bawani Khera, District Bhiwani and name of Sultan (father of respondent-defendant No.5) has been wrongly shown as *gair marusi* in column No.9. During the pendency of the suit, petitioner-

plaintiff filed an application for appointment of Local Commissioner to report qua possession over the suit land. The said application has been dismissed by the trial Court vide impugned order dated 10.05.2023.

3. Learned counsel for the petitioner contended that the trial Court wrongly dismissed the application of the petitioner for appointment of Local Commissioner without appreciating the fact that appointment of Local Commissioner is necessary for effective adjudication of the matter as report of the Local Commissioner will disclose about the possession of the parties over the land in question. He further contended that as the impugned order is against the principles of natural justice, the same is liable to be set aside.

4. I have heard learned counsel for the petitioner and perused the record.

5. It is settled principle of law that he, who alleges, must prove initially that such and such things are in existence. This is not the duty of the Court that it should appoint Local Commissioner and then identify which party is in possession of the suit land. The Courts are not to help the plaintiff or the defendant for collecting evidence. It is duty of the parties to lead substantive evidence with regard to its claim. However, when there is dispute regarding certain evidence and existence of some facts, only then Court can appoint Local Commissioner. Petitioner-plaintiff is claiming himself to be in possession over the suit land and wants that evidence should be collected for him by the Court by appointing Local Commissioner, which cannot be allowed.

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6. Hon'ble Supreme Court in ***Haryana Waqf Board vs. Shanti Sarup and others, (2008) 8 Supreme Court Cases 671*** has held that Local Commissioner can be appointed only to clarify the position of the existing state of affairs only after the evidence is led.

7. This Court in ***Bant Singh alias Balwant Singh and another vs. Raghubir Singh and others, 2008(4) RCR (Civil) 260, Brij Mohan Aggarwal vs. Ramesh Chand, Civil Revision No.1458 of 2009 decided on 9.7.2009, Rambir Singh vs. Gram Panchayat, Narhera and others, 2012(1) PLR 429 and Ganpat vs. Satvir and others, Civil Revision No.824 of 2013 decided on 5.2.2013*** has held that revision petition against the order passed by learned trial Court dismissing the application for appointment of Local Commissioner, is not maintainable.

8. No illegality or infirmity could be pointed out by the counsel for the petitioner in the impugned order so as to call for interference by this Court. Finding no merit in the revision petition, the same is consequently dismissed.

12.12.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No