

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**132****CR No.1412 of 2024****Reserved on : 05.03.2024****Date of Decision : 11.03.2024**

Smt. Sudesh Jain

....Petitioner

VERSUS

State of Haryana and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ojas Bansal, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 04.12.2023 passed by the Additional Civil Judge (Senior Division), Sonapat whereby the application filed by the plaintiff-petitioner for appointment of a Local Commissioner has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for possession and mandatory injunction and for direction to the defendant-respondents to hand over vacant possession of the encroached land of the plaintiff-petitioner alleging therein that the plaintiff-petitioner is owner of the land falling in Khasra Nos.8817/8619/4561 total measuring 5B-12B situated in the revenue estate of Patti Musalmanan, Sonipat in Khewat No.2516, Khata No.3443 and that the defendant-respondents have encroached upon an area of 950 sq. yards (0B-19B) owned by the plaintiff-petitioner. 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 demarcation of the land encroached upon by the defendant-respondents. It was stated in the application that though the demarcation was got done by the plaintiff-petitioner prior to institution of the suit but since the defendant-respondents have denied any such demarcation in their written statement, it was necessary to file an application for appointment of a Local Commissioner. Separate replies were filed by defendant-respondent Nos.1 to 3 and defendant-respondent No.12 to the application and vide the impugned order the said application was dismissed on the ground that once the plaintiff-petitioner has already relied upon a demarcation report placed on record by her, no ground is made out to get the demarcation done again.

3. Learned counsel for the plaintiff-petitioner would contend that for ascertaining the factual position at the spot the appointment of a Local Commissioner was necessary and the application has wrongly been dismissed by the Trial Court vide the impugned order dated 04.12.2023. In support of his arguments learned counsel for the plaintiff-petitioner has relied upon judgment of this Court in the case of **M/s Allwin Infrastructure Ltd. vs. M/s Maxxus Developers & Ors. [2021(1) RCR (Civil) 177]**.

4. I have heard learned counsel for the plaintiff-petitioner.

5. In the present case the challenge is to the order dismissing an application for appointment of the Local Commissioner. A Division Bench of this Court in the case of **Pritam Singh Vs. Sunder Lal [1990(2) PLR 191]** inter-alia held as under :

“6. After going through the judgments cited in the reference order, we do not find that the earlier judgment

in Harvinder Kaur's case (supra) requires any reconsideration. 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."

6. 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.

7. The judgment relied upon by learned counsel for the plaintiff-petitioner in **M/s Allwin's case** (*supra*) would be of no avail inasmuch as in the said case the revision petition was filed against the order allowing an application for appointment of a Local Commissioner.

8. In the present case the plaintiff-petitioner is seeking appointment of a Local Commissioner for demarcation of the property whereas the entire case of the plaintiff-petitioner in the plaint is for possession and mandatory injunction. That being so, it is for the plaintiff-petitioner to prove her case and she cannot take the aid of the Court agency for creating evidence for her. In the present case *prima facie* there does not appear to be any dispute regarding demarcation of the land inasmuch as the suit simpliciter is for possession and mandatory injunction.

9. In view of the above, I do not find any merits in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

11.03.2024
jk

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