



120

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

CR-2615-2024 (O&M)

Date of decision : 09.05.2024

Samaj Vikash Paryatan Kendra

... Petitioner(s)

Versus

Ajit Kumar & Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.K. Gupta, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 04.03.2024 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Loharu 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 declaration to the effect that he was owner in possession of the land comprised in Khewat No.48//47 Khatoni No.68 Khasra No.88//5/3/2(2-17) situated within revenue estate of Village Sohansara, Teshil Loharu, District Bhiwani and for permanent injunction for restraining the defendant-respondent from interfering in the peaceful possession of the plaintiff-petitioner. During the pendency of the suit, the



plaintiff-petitioner filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of a Local Commissioner for submitting his report about the actual and factual position at the spot. Reply was filed to the said application and vide the impugned order the said application was dismissed on the ground that it is for the plaintiff-petitioner to prove his case and that by appointing a Local Commissioner the Court could not assist the plaintiff-petitioner in collecting the evidence.

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 04.03.2024. Learned counsel has relied upon the judgment passed by this Court in **M/s Allwin Infrastructure Limited, Panchkula Vs. M/s MAXXUS Developers & Ors. [2021(1) RCR (Civil) 177]** to contend that a revision petition against the order dismissing the application for appointment of Local Commissioner would be maintainable.

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 the learned counsel for the plaintiff-petitioner would be of no avail to him inasmuch as in the case of **M/s Allwin Infrastructure Limited, Panchkula** (supra) the revision petition was filed challenging the appointment of the Local Commissioner, which was dismissed on merits finding no illegality or infirmity in the impugned order.

8. In the present case the plaintiff-petitioner is seeking appointment of a Local Commissioner for demarcation of the land whereas the entire case of the plaintiff-petitioner in his plaint is for declaration to the effect that he is the owner in possession of the land in dispute and for permanent injunction restraining the defendant-respondent from interfering in the peaceful possession of the plaintiff-petitioner. That being so, it is for the plaintiff-petitioner to prove his case and he cannot take aid of the Court agency for creating evidence for him.

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.

09.05.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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