



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

134

CR No.2828 of 2024
Date of Decision : 16.07.2024

Jagpal SinghPetitioner

VERSUS

Devender Lather and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ankit Yadav, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present revision petition under Article 227 of the Constitution of India has been preferred by the plaintiff-petitioner for setting aside the order dated 09.04.2024 passed by the Additional Civil Judge (Senior Division), Bahadurgarh vide which the application for appointment of a Local Commissioner has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration with consequential relief of permanent injunction to the effect that he is owner in possession of the property comprised in Khewat No.125/99, Khatoni No.149, Rect. No.18/23(7-11) situated in the revenue estate of Village Sarai Aurangabad, Tehsil Bahadurgarh, District Jhajjar now within the Municipal Committee limits of Bahadurgarh town. The plaintiff-respondent No.1 purchased the said property from the petitioner herein and his brother Jagir Singh (defendant No.2) and through their power of attorney holder Sh. Ram

Kanwar vide registered sale deed No.4482 dated 07.01.1999 for a total sale consideration of Rs.1,99,000/- and mutation to this effect was entered in the revenue record vide mutation No.2157 dated 04.08.1999. It was further alleged that there was some mistake regarding the number and date of power of attorney, name of the owner etc. and to rectify the same Sh. Ram Kanwar, GPA Holder of the petitioner and defendant No.2 executed a supplementary sale deed dated 4853 dated 12.01.2001 in favour of the plaintiff-respondent No.1. It was further the case set up that after purchasing the suit property the plaintiff-respondent No.1 constructed a swimming pool, boundary walls and bathrooms etc. and also installed a water filter plant for the treatment of the water of the swimming pool and in that the school students of Mount View School, Bahadurgarh and inhabitants of Bahadurgarh started to take training.

3. On notice the defendant-petitioner appeared and filed his written statement stating therein that they are the true and actual owners of the suit property and are in possession of the same. It was further pleaded that they never sold the suit property to the plaintiff-respondent No.1 and infact they have constructed the swimming pool and raised the other constructions over the suit land. It was further averred in the written statement that they have given Khewat No.125 Rect. and Killa No.18/13 (7-11) on lease to Hari Educational Society, Chhara-Bedi Road, Bahadurgarh for a period from 08.01.2009 to 07.01.2039 and since then Hari Educational Society is running New Brain Public School and that that suit property is situated at the center of the said school which is now being used as playground for the students of the school.

4. Thereafter, during the pendency of the suit, the defendant-petitioner filed an application under Order XXVI read with Section 75 of the Code of Civil Procedure, 1908 for appointment of a Local Commissioner for ascertaining and reporting the actual and factual position of the suit land and for demarcation of the suit property. The said application was contested by the plaintiff-respondent No.1 and vide the impugned order dated 09.04.2024 the said application was dismissed by the Trial Court.

5. Learned counsel appearing on behalf of the plaintiff-petitioner has contended that the appointment of the Local Commissioner would be necessary in order to ascertain the actual and factual position of the suit land.

6. At the outset, a query was put to the learned counsel for the plaintiff-petitioner regarding the maintainability of the present revision petition. Learned counsel has relied upon the orders passed in **M/s Allwin Infrastructure Limited, Panchkula Vs. M/s MAXXUS Developers & Ors. [2021(1) RCR (Civil) 177]** to contend that the revision petition would be maintainable.

7. Heard.

8. In the present case the challenge is to the order dismissing the application for appointment of a 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.”

9. 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.

10. 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.

11. In view of the law laid down by the Division Bench of this Court, I do not find any illegality or irregularity in the order passed by the Court below.

12. The revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

16.07.2024
jk

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