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

CR-2669-2021 (O&M)
Date of decision: 12.12.2024

Kirpal Singh and others

...Petitioners

Versus

Balkar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vikas Bali, Advocate for the petitioners.

Mr. Vivek Singla, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 09.09.2021 (Annexure P-9) passed by the Court of Civil Judge (Junior Division), Nakodar, District Jalandhar in Civil Suit No.303 of 2014 titled as “Balkar Singh Versus Naranjan Singh” whereby the Court has dismissed the application (Annexure P-7) filed by the petitioners/defendants for appointment of a Local Commissioner to visit the spot for measurement of property in question.

2. Learned counsel for the petitioners has submitted that the respondent-plaintiff had filed a suit for grant of a decree for possession of plot bearing evacuee property No.17 measuring 10 marlas, 4 sarsai, 22



square feet, as shown red in the attached site plan situated in the abadi of Village Tanda Urra, Police Station Mehatpur, Tehsil Nakodar, District Jalandhar after removal of malba. It is submitted that in para 4 of the said suit, the plaintiff had himself admitted that his brother had filed a suit qua the property in question and one of the petitioners i.e., petitioner No.5 along with other persons had made a statement that they had no concern with the property which was plot bearing No.17 and on the said statement of petitioner No.5 and other persons, the suit was dismissed as withdrawn on 15.12.2010. It is submitted that a perusal of the plaint in the earlier suit would show that dimensions with respect to the said plot No.17 are different than the dimensions which have been mentioned in the present suit and it is in view of the same that the petitioners had moved an application for appointment of Local Commissioner to visit the spot for measurement of the property in question. It is submitted that the said application was meritorious and should have been allowed but the trial Court vide impugned order dated 09.09.2021 had dismissed the said application. It is submitted that allowing the same would have resulted in proper adjudication of the case.

3. Learned counsel appearing on behalf of the respondent, on the other hand, has opposed the present revision petition and has submitted that the appointment of Local Commissioner is governed by the provision of Order 26 Rule 9 of CPC and the said provision empowers the Court to make local investigation and it is an enabling power and the same is not a vested right with the party. It is submitted that the trial Court, after taking into consideration the entire aspects had observed that the appointment of a



Local Commissioner would result in the trial Court collecting the evidence for the defendants which is not permissible in law and rather it is for both the parties to lead their own evidence in support of their pleas. It is submitted that the impugned order is in accordance with law and deserves to be upheld.

4. This Court has heard learned counsel for the parties and has perused the paper book and finds that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed.

5. Firstly, it would be relevant to mention that the Division Bench of this Court in the case of ***Pritam Singh vs. Sunder Lal*** reported as ***1990(2) PLR 191*** had observed 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. Learned Single Judge, vide judgment dated 18.07.2022 passed in ***Civil Revision No.2752 of 2022*** in case titled as ***“Harchand Vs. Karambir Singh and another”***, by placing reliance upon the above-said judgment of Division Bench and also the judgment of the learned Single Bench in ***“Raksha Devi Vs. Madan Lal and others”***, reported as ***[2017 (3) PLR 249]***, had observed that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner. The relevant portion of the said judgment in ***Harchand's*** case (supra) is reproduced as under: -

“4. Learned counsel appearing on behalf of the plaintiff-petitioner has contended that the appointment of the Local Commissioner would be necessary in order to bring on record



the existing position of the suit property.

5. Heard.

6. 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.”

7. 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.

8. 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.

9. The revision petition is accordingly dismissed.

Pending applications, if any, also stand disposed off.”

6. The provision of Order 26 Rule 9 CPC is reproduced hereinbelow:-

“9. Commissions to make local investigations.—*In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court;*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

A perusal of the said provision would show that the same provides that it is within the power of the Court to issue a Commission to such person as it thinks fit, to make an investigation on some aspect. A further reading of the said provision would show that there is no right vested in favour of a party to get the said commission issued and rather the same is an enabling provision that enables the Court to appoint a



Commissioner if it is of the opinion that the same is required in a case.

7. In the present case, the trial Court had taken into consideration the fact that the plaintiff is seeking a decree for possession of plot bearing evacuee property No.17 measuring 10 marlas, 4 sarsai, 22 square feet against defendants/petitioners on the averments that the said property was initially allotted to Smt. Santi and thereafter, a conveyance/sanad was issued in the name of Surat Singh i.e, the father of the plaintiff in the year 1955 and the said Surat Singh died on 15.12.1977 and the plaintiff is one of the legal heirs of the said Surat Singh and is thus, claiming possession of the said plot No.17. Even the stand of the present petitioners in the written statement to the effect that the petitioners are in possession of plot No.20 which measures 18 marlas 4 sarsai 22 square feet and the same had been purchased by them from the legal heirs of Ishar Kaur who was allotted the said plot No.20 on 09.12.1953, had been noticed and after noticing the said aspect, it had been observed that it is for the parties to lead their own evidence and the Local Commissioner cannot be appointed to collect evidence for any of the parties. It had further been observed that only measurement of the property in question cannot be the criteria for the identification of the property in question and that the plaintiff had already led his evidence and the case was listed for defendants evidence. The said order has been passed in accordance with law and does not call for any interference even on merits.

8. It would be relevant to note that the question “as to whether the present petitioners are in possession of plot No.20 or plot No.17” is a matter which has to be decided during the course of trial on the basis of evidence



led by both the parties. The plaintiff, who had filed a suit for possession by averring that evacuee plot No.17 measuring 10 marlas 4 sarsai 22 square feet has been forcibly taken into possession by the defendants/petitioners, has not chosen to file an application for appointment of a Local Commissioner to demarcate the property in question. It is inconceivable as to why the defendants in such a situation would file an application for appointment of a Local Commissioner for the purpose of measurement and on the application being rejected, would file the present revision petition to challenge the same.

9. Keeping in view the abovesaid facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

12.12.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No