

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5643-2023 (O&M)
Date of decision : 20.03.2024

Vijay Laxmi ... Petitioner(s)

Versus

Kanta Garg & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajeev Kaswan, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition under Article 227 of the Constitution of India has been filed for issuance of directions to respondent Nos.1 and 2 to stop the illegal construction activities and further direction to respondent No.3 to take appropriate legal action against respondent Nos.1 and 2 and to accept the application for appointment of Local Commissioner which has been dismissed vide order dated 31.05.2023 (Annexure P-4) passed by the Civil Judge (Junior Division), Sirsa.
2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for permanent injunction for restraining the defendant-respondents from constructing H.No.106-A, C-Block, Sirsa. During the pendency of the suit, the plaintiff-petitioner filed an application under Order XXVI Rule 9 read with Section 151 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. It has also been noticed in the order dated 31.05.2023 that defendant-respondent No.3 - Municipal Council - has already submitted its report regarding the spot inspection of the property vide order dated 02.05.2023.

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 31.05.2023 (Annexure P-4).

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. In the present case the plaintiff-petitioner is seeking appointment of a Local Commissioner for demarcation of the land, whereas

CR-5643-2023 (O&M)

-4-

the entire case of the plaintiff-petitioner in his plaint is for permanent injunction restraining the defendant-respondents from making any construction. 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.

8. 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.

20.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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