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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5437-2024

Date of decision : 19.09.2024

Palwinder Singh (now deceased) through LRs

... Petitioner

Versus

Surinder Kumar and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Satbir Rathore, Advocate and
Ms.Jyotika Behl, Advocate for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 14.08.2024 (Annexure P-7) passed by the Civil Judge (Jr. Div.), Dasuya vide which the application (Annexure P-5) filed by the defendant-petitioner for the appointment of a Local Commissioner has been dismissed.
2. Brief facts of the present case are that the plaintiff-respondent no.1 had filed a suit for permanent injunction restraining the defendant-petitioner or his agents, relatives etc. from interfering in any manner in the peaceful use and possession of the Haveli of the plaintiff which was bounded as detailed in the site plan. It was the case of the plaintiff that the area in question was in the possession of the plaintiff, which also included his residential house and that the defendant had forcibly started throwing manure pits on the said land. It was stated that the defendant was a head

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strong person and had influence on the local officials and hence, he was taking the benefit of the same. A written statement was filed by the defendant-petitioner in which one of the pleas taken by the petitioner was that after the demise of Uttam Chand, the property was inherited by Daulat Ram, Sohan Singh and Hari Ram and all the owners got dug a Well in the suit property.

3. Learned counsel for the petitioner has informed the Court that the evidence of the plaintiff was concluded and subsequently, an application dated 04.04.2024 was filed by the petitioner under Order 26 Rule 9 CPC read with Section 151 CPC for the appointment of a Local Commissioner to report regarding the existence or non existence of the Well in the suit property. The said application was opposed by the plaintiff by filing a reply dated 07.05.2024. It was stated in the reply that the petitioner was neither the owner nor in possession of any part of the property and had filed a false application just to delay the proceedings.

4. The trial Court vide order dated 14.08.2024 had dismissed the said application by observing that the petitioner wanted the Court to collect evidence on behalf of the petitioner which is not permissible. It was observed that it is the petitioner, who is under the legal obligation to prove his plea taken in his written statement, by leading positive evidence. It is the said order which has been challenged in the present revision petition.

5. Learned counsel for the petitioner has submitted that if the Local Commissioner is appointed, it would be established that the plea raised by the petitioner in the written statement with respect to there being a



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Well in the suit property is correct and it would further help the Court in deciding the case and thus, it is prayed that the application be allowed and the impugned order dated 14.08.2024 be set aside.

6. The above said argument raised by the learned counsel for the petitioner is meritless and deserves to be dismissed on two counts. 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.”

7. 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.

8. The trial Court has in the present case found that the same is not required, and rather appointing a Local Commissioner would amount to collecting evidence on behalf of the defendant-petitioner and has stated that

it is the duty of the respective parties to lead evidence to prove their pleas



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and it is for the defendant-petitioner to lead positive evidence in order to prove the stand of the defendant-petitioner in the written statement. On the said aspect, it would be relevant to refer to the judgment of the Coordinate Bench of this Court passed in ***Civil Revision no.4651 of 2011*** titled as ***“Smt.Ulfat vs. Hardeep Singh” decided on 03.08.2011*** in which it was specifically observed that the Court is not to collect evidence for the parties. It was further observed that no revision lies against the order passed by the trial Court refusing to appoint a Local Commissioner, as discretion exercised by the trial Court cannot be interfered with in its revisional jurisdiction. It was also observed that the said principle would also apply to a revision petition filed under Article 227 of the Constitution of India and several judgments on the said aspect were taken into consideration. The relevant part of the said judgment is reproduced hereinbelow:-

“...Court is not to collect evidence for the parties and hence, Local Commissioner cannot be appointed to report as to who is in possession of the property in dispute.

Moreover law is well settled that no revision lies against the order passed by learned trial Court refusing to appoint Local Commissioner in its discretion. Hence, discretion exercised by learned trial Court cannot be interfered by this Court in its revisional jurisdiction, either under Section 115 of the Code of Civil Procedure (hereinafter to be referred as 'the Code') or under Article 227 of the Constitution of India.

In Pritam Singh and another v. Sunder Lal and others, 1990 (2) PLR 191: 1990 PLJ 418: 1991(1) RRR 356: 1990(2) LJR 244, a Division Bench of this Court by relying upon the decision of this Court rendered in Harvinder Kaur v. Godha Ram, ILR 1979(1) Punjab and Haryana 147 has



observed that no revision would lie against an order passed under Order 26 Rule 9 of the Code.

This Court in subsequent judgment rendered in Sumer Chand Jain v. Vishnu Bhagwan Mangla, 2006(2) RCR (Civil) 445: 2006(2) PLR 844: 2006(1) PLJ 59 by placing reliance upon Harvinder Kaur's case (supra) and Pritam Singh's case (supra) observed as under:-

"In two Division Bench decisions of this Court in Smt. Harvinder Kaur and another v. Godha Ram and another, AIR 1979 Punjab and Haryana 76 and Pritam Singh v. Sunder Lal, 1991 (1) RRR 356 : (1990-2) 98 PLR 191, it has been held that the order refusing to appoint the Local Commissioner under Order 26 Rule 9 C.P.C. is not revisable under Section 115 C.P.C., therefore, such an order should not be interfered now under Article 227 of the Constitution of India. In this regard, in Hari Om v. Minish Kumar, (2005- 2) PLR 690, it was observed by this Court that if a revision petition under Section 115 C.P.C. against the impugned order is not maintainable, then by mere change in the head note of the petition, the substance cannot be replaced to wriggle out from the rigors of law which is well settled that no revision petition under Section 115 C.P.C. is maintainable."

On the same point are the decisions of this Court in subsequent judgments rendered in Bant Singh alias Balwant Singh and another v. Raghubir Singh and others, 2008(4) RCR (Civil) 260: 2008(2) RCR (Rent) 297 and Rajiv Kumar Batra v. Kashmiri Lal Sika, 2010(6) RCR (Civil) 37 in which also it was held that revision petition either under Article 227 of the Constitution of India or under Section 115 of the Code is not maintainable against an order dismissing application for appointment of Local Commissioner.



In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

Moreover, law has been well settled by Hon'ble Apex Court in Surya Dev Rai v. Ram Chander Rai and others, 2003 (6) SCC 675: AIR 2003 SC 3044: 2004(1) RCR (Civil) 147, that supervisory jurisdiction is not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors for drawing inference like a Court of appeal. It has been observed as under:-

"Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

Hence, the present revision petition is, hereby, dismissed being devoid of any merit."

9. This Court finds that the impugned order has been correctly passed and does not call for any interference and deserves to be upheld and the revision petition filed by the petitioner being meritless deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 19, 2024
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No