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

CR-6257-2024**Date of decision: 28.10.2024**

Malkiat Singh (since deceased) son of Amar Singh through his legal heir
Raj Rani

...Petitioner

Versus

Suman and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Deepak Arora, Advocate
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 17.11.2023 passed in Civil Suit No. 1492 of 2019 vide which the Court below dismissed the application filed under Order 26 Rule 9 CPC for appointment of Local Commissioner.

2. The respondent Nos. 1 & 2 had filed a suit for permanent injunction restraining the defendants, their servants and agents from dispossessing the plaintiffs from the property in question, which as per their case is Khasra No. 529/2 (0-13) recorded in the jamabandi for the year 2016-17 situated in the revenue estate of village Kahnuwan Banger, Had Bast No. 606, Tehsil and District Gurdaspur.

3. The petitioner had filed a written statement opposing the said case. An application was filed by the petitioner/ defendant stating that the



plaintiffs had wrongly and intentionally showed the plot in question in khasra No. 529, whereas the plot in question was in Khasra No. 531. The said application was opposed by the plaintiffs.

4. The learned trial Court vide order dated 17.11.2023 dismissed the said application and observed that the provisions of Order 26 Rule 9 confers discretion upon the Court in the matter of appointment of Local Commissioner and that in the case in question the Court deems it fit, not to order the appointment of Local Commissioner and further observed that the burden to prove their case was on the respective parties and those respective parties were to lead their evidence.

5. 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. Learned counsel for the petitioner has not been able to show any judgment that the present revision is maintainable.

7. In view of the law laid down in the above-said judgments, the present revision petition is not maintainable and the same is accordingly dismissed

28.10.2024

Satyawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No