

**CR-6904-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(129)****CR-6904-2024****Date of Decision: - 28.11.2024****Naresh Kumar****....Petitioner****Versus****Sain Dass @ Sanjhi Ram 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 14.08.2023 (Annexure P-4) passed in CM No.228 of 2019 by the Civil Judge, Junior Division, Gurdaspur.

2. Learned counsel for the petitioner has submitted that the petitioner, who is the judgment debtor, had moved an application for appointment of local commissioner for demarcation of Khasra No.201 in order to see as to whether a plot exists in the said khasra number or not. It is further submitted that the said application has been dismissed by the Court vide order dated 14.08.2023 and the said order is illegal and deserves to be set aside and the application moved by the petitioner for appointment of local commissioner is meritorious and deserves to be



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allowed.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and is of the opinion that the order dated 14.08.2023 passed by the Civil Judge, Junior Division, Gurdaspur, is in accordance with law and deserves to be upheld, for the reasons which are detailed herein after.

4. Respondent No.1 had filed a suit for separate possession by way of partition by metes and bounds after removal of Malba/super structure with respect to plot of land measuring 0-5 marlas comprised in Khewat No.403, Khatauni No. 627, Khasra No. 201 (0-5), situated in the revenue estate of Village Jandi, Had Bast No. 690, Tehsil and District Gurdaspur. A consequential relief of permanent injunction restraining the defendant No.1-Naresh Kumar, i.e., the present petitioner from raising any sort of further super structure over the plot of land measuring 0-5 marlas was also sought. In the said suit, there were five defendants including the present petitioner who was defendant No.1.

5. A preliminary decree was passed in the said suit vide judgment and decree dated 03.07.2019 to the following effect: -

“20. In view of my findings on the above said issues, the suit of the plaintiff succeeds and stands partly decreed with costs. A preliminary decree is ordered to be passed to the effect that the plaintiff is owner in possession to the extent of 1/3 share in Khewat No. 403/422, Khatauni No. 627 Khasra No. 201 (0-5) situated in the revenue estate of Village Jandi, Tehsil and District Gurdaspur. Defendants No. 1 to 4 have 1/3 share and defendant No.5 also has



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1/3 share. At the time of final partition, possession of the parties shall be protected as far as possible. Decree sheet be prepared and file be consigned to the record room.

Pronounced in Open Court on 03.07.2019.”

A perusal of the judgment and decree (Annexure P-1) would show that it was the specific case of the plaintiff/respondent No.1 that defendant No.1/present petitioner was threatening to raise a super-structure over the plot measuring 0-5 marlas illegally and in response to the said pleadings, it was the case of the present petitioner that there was no plot measuring 5 marlas as has been alleged by the plaintiff. The trial Court after taking into consideration the evidence and the documents on record, however decreed the suit and rejected the argument raised by the defendants to the effect that there was no such plot that exists in the suit property and it was noticed that none of the defendants had appeared in the witness box to depose on oath and to prove the averments of the written-statement. The jamabandi which had been duly exhibited as Ex.P1 was taken into consideration and it was further observed that the objection raised by the defendants to the effect that no such property exists in the suit property is not maintainable and the suit was decreed. On a pointed query raised by this Court, learned counsel for the petitioner has fairly submitted that no appeal against the said judgment has been filed and the said judgment has attained finality.

6. The present petitioner, who was a judgment debtor, had during the course of the proceeding for passing of the final decree moved

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an application for appointment of a Local Commissioner for demarcation of Khasra No.201 in order to ascertain as to whether there was existence of plot in the said property or not. The said application was dismissed by the trial Court vide order dated 14.08.2023 after observing that all the issues which were raised by the defendants in the suit have been rejected including the plea raised by the defendants to the effect that there was no such plot that exists in the said property and a preliminary decree was passed thereafter and it was not open to the JD No.1/present petitioner to re-agitate the said issues.

7. It would be relevant to note that the petitioner who is judgment debtor No.1/defendant No.1 has only 1/12 share in the suit property measuring 5 marlas comprised in khasra No.201 and is making every effort to delay the passing of the final decree and to deprive the plaintiff of his share of 1/3, which has been so found vide judgment and decree dated 03.07.2019. The other defendants including defendant No.5 who individually has share of 1/3 as well as defendants No.2 to 4 who, alongwith defendant No.1 together have 1/3 share in the suit property, had neither filed any objection nor had filed the present petition. It would also be relevant to note that the impugned order was passed on 14.08.2023, whereas, the present revision petition has been filed after a period of more than one year and three months and the same has been done only to delay the proceedings and the present petitioner is seeking to re-agitate the points which have already been decided, vide judgment and decree dated 03.07.2019.



8. Additionally, 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.”*

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9. Keeping in view the above-said facts and circumstances, this Court is of the view that the impugned order has been correctly passed and deserves to be upheld and the revision petition filed by the petitioner being meritless deserves to be dismissed and is accordingly dismissed.

November 28, 2024

naresh.k

(VIKAS BAHL)

JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes