

2024:PHHC:015014

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.7507 of 2023
Date of Decision:05.02.2024

Mohkam Singh

...Revisionist-Petitioner

Versus

Rakesh Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mrs. Kanwal S. Walia, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.

By filing the instant revision-petition under Article 227 of the Constitution of India, the petitioner-defendant No.1 (here-in-after to be referred as 'defendant No.1) has assailed the order (Annexure P-1) passed by learned Civil Judge (Junior Division), Patiala (for short 'the trial Court) on 23.11.2023 in *Civil Suit No.1991 of 2018* titled as '*Rakesh Kumar and ors Vs. Mohkam Singh etc*', whereby the application Annexure P-13, as moved by respondents No.1 and 2-plaintiffs (here-in-after to be referred as 'the plaintiffs) for seeking the appointment of the Local Commissioner, has been allowed.

2. I have heard learned counsel for the petitioner-defendant No.1 in the present revision-petition, at the preliminary stage and have also gone through the file carefully.

3. Learned counsel for defendant No.1 has contended that it is entirely for the plaintiffs to lead cogent and trustworthy evidence on the record so as to substantiate their claim in the above-referred Civil Suit and the Court cannot facilitate the collection of evidence for them (plaintiffs), by way of appointing the Local Commissioner and in these circumstances, it becomes explicit that the impugned order is not legally sustainable and hence, the same deserves to be set-aside. To buttress her contentions, she has placed reliance upon the verdicts rendered in Meenakshi Vs. Vennila & anr. C.R.P. (PD) No.1464 of 2008 and M.P. No.1 of 2008 decided on 06.09.2008 (Madras) Law Finder Doc Id# 151040, Dhondiram Nivrutti Pawar (since deceased), through LRs and others Vs. Laxman Khashaba Pawar and others, Writ Petition No.1196 of 2017 decided on 23.01.2018 (Bombay) Law Finder Doc Id # 976542, Chinnathambi and others Vs. Anjalai C.R.P(PD) No.1721 of 2005 & C.M.P. No.19371 of 2005 decided on 22.09.2006 (Madras) Law Finder Doc Id # 657407, Kanniammal Vs. Chellamuthu, Civil Revision Petition (PD) No.3980 of 2016 decided on 08.03.2022 (Madras) Law Finder Id # 1988881, Sunil Vs. Omprakash and others, Misc. Petition No.565 of 2023 decided on 03.02.2023 (M.P) Law Finder Id # 2156489, Surinder Singh Vs. Bimal Kumar and another, CR No.4450 of 2017 decided on 18.07.2017 (P&H) Law Finder Id # 906649, Shamsher Singh and others Vs. Baljit Singh, CR No.1021 of 2021 decided on 30.04.2021 (P&H) Law Finder Doc Id # 2016598, Raj Singh and others Vs. Mukhtiar Singh, CR No.8612 of 2014 decided on 06.02.2015 (P&H) Law Finder Doc Id # 663559, Union of India Vs. M/s.

Kripal Industries, CR No.124 of 1998 decided on 06.03.1998 (Raj) Law Finder Doc Id # 136357, Ashok Kumar Bansal Vs. Parmod Ashri and others, CR No.1651 of 2022 decided on 13.12.2022 (P&H) Law Finder Doc Id# 2086275, Baljit Kaur Vs. Tehal Singh and others, CR No.1603 of 2022 decided on 29.04.2022 (P&H) Law Finder Doc Id # 2019817 and Parveen Goyal and another Vs. Raghbir Singh, CR No.5729 of 2022 decided on 23.01.2023 (P&H).

4. Though it has been observed in the afore-cited cases that the Local Commissioner cannot be appointed for ascertaining the possession over the disputed property and thereby, collecting evidence for any of the parties to the *lis* but these observations are of no avail to defendant No.1 because in their application Annexure P-13, the plaintiffs have made prayer for the appointment of the Local Commissioner for taking the photographs of the property in dispute and to submit his report regarding the actual and factual existing position thereof and they have also clarified in para No.4 therein that they do not intend to seek his (LC's) report qua the possession of any particular person/individual over this property and to, thereby, create evidence and it is worth-while to mention here that in para No.3 in the impugned order Annexure P-1, the trial Court has categorically observed that the appointment of Local Commissioner would help it in adjudicating the matter in controversy and no prejudice would be caused to the opposite party as the defendants would have ample opportunity to cross-examine him. Thus, it becomes crystal clear that while passing the impugned order, the trial Court has exercised its discretion, as envisaged under Order 26

Rule 9 CPC qua the appointment of Local Commissioner, for arriving at the just and proper decision in the above-said Civil Suit.

5. Seen from yet another angle also, the instant revision-petition is not maintainable in view of the observations made by the Division Bench of this Court in **Harvinder Kaur and another Vs. Godha Ram and another C.R. No.1198 of 1997 decided on 24.08.1978 Law Finder Doc Id # 74312** to the effect that “no revision would lie against an order passed under Order 26 Rule 9 CPC” and re-iterated, later-on, by another Division Bench in **Pritam Singh and another Vs. Sunder Lal and others, 1990 PLJ 418.** To add to it, this Court has also taken note of the afore-quoted observations while dismissing the revision-petitions in **Surinder Singh (supra), Ashok Kumar Bansal (supra) and Parveen Goyal and another (Supra).**

6. As a sequel to the fore-going discussion, this Court is of the considered opinion that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for interference by this Court. Resultantly, the revision-petition in hand, being *sans* any merit, stands dismissed accordingly.

05.02.2024
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes