



113

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

CR-272-2022

Date of decision: 07.04.2025

Sona Devi (deceased) through her LRs

...Petitioner(s)

Versus

Rameshwar

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. D.K. Prajapati, Advocate for the petitioner(s).

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 22.12.2021 (Annexure P-1) passed by the District Judge, Yamuna Nagar at Jagadhri vide which an application filed by the petitioner(s) for appointment of Local Commissioner for demarcation of the suit property had been dismissed.

2. The petitioner(s) had filed a suit for possession on 28.04.2011 which was dismissed vide judgment dated 29.11.2016 after due contest. An appeal was filed by the petitioner(s) against the said judgment. During the pendency of the appeal, an application was filed by the petitioner(s) for appointment of Local Commissioner for demarcation of the suit property. The First Appellate Court, vide order dated 22.12.2021, had dismissed the said application. In the said order dated 22.12.2021, it was observed that a



perusal of the file shows that similar application was filed by the plaintiffs before the lower Court and reply to the same was also filed and the same remained undecided and both the parties had led their evidence on merits of the case and after hearing the parties, the suit had been finally decided vide judgment and decree dated 29.11.2016. It was observed that from the said conduct, it appeared that the petitioner(s) had not pressed their application before the trial Court at the relevant stage. It was further observed that the application deserved to be dismissed on the ground that it was a settled principle of law that a person who alleges must prove the said facts and the Courts cannot help the plaintiff or defendant in collecting the evidence as it was the duty of the parties to lead substantive evidence in support of their pleas. It was also observed that the petitioner(s)/plaintiffs wanted the Court to collect the evidence for them, which was not permissible. On the said aspect, reliance was placed upon the judgment of the Coordinate Bench of this Court in the case of **Gulshan Kumar Jain Vs. Neena Jauhar and others**, reported as **2013(1) RCR (Rent) 276**. The impugned order passed is in accordance with law and does not call for any interference.

3. It would be relevant to note 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.”*

4. 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.

5. 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 being meritless, deserves to be dismissed and is accordingly, dismissed.

07.04.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No