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

(124)

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Date of Decision: - 07.01.2025

Rupinder Singh

....Petitioner

Versus

Tarsem Lal

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ramesh Sharma, 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 13.08.2024 (Annexure P-5) passed by the Civil Judge (Junior Division), Batala vide which the application filed by the petitioner/defendant under Section 151 CPC for appointment of Local Commissioner has been dismissed.

2. Learned counsel for the petitioner has submitted that the respondent had filed a suit for permanent injunction and there is a dispute regarding identity of the property and the Local Commissioner previously appointed by the Court had not carried out the demarcation in the presence of the petitioner and thus, a prayer has been made that another Local Commissioner be appointed. It is further submitted that the

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impugned order vide which the said application for appointment of second Local Commissioner has been dismissed is illegal and deserves to be set aside and the application filed by the petitioner for appointment of second Local Commissioner deserves to be 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 13.08.2024 (Annexure P-5) passed by the Civil Judge (Junior Division), Batala, is in accordance with law and deserves to be upheld, for the reasons which are detailed herein after.

4. It is not in dispute that the respondent/plaintiff had filed a suit for permanent injunction restraining the petitioner/defendant from dispossessing him from the suit property measuring 0 Kanal 8 Marla, part and parcel of land bearing Khasra No.82//15/2 (1-9), 82//16 (2-13), 83//19 (8-0), 20(8-0) situated at Batala Garbi Tehsil Batala, District Gurdaspur. A written statement was filed by the present petitioner, in which, it was stated that the plot in question was part and parcel of the Khasra No.82//27/2. An application was filed for appointment of a Local Commissioner/halka kanungo for the demarcation of the suit property and the said Local Commissioner/halka kanungo after giving due intimation to both the parties through Chowkidar, carried out the demarcation and the said demarcation was also done in the presence of Numberdar as well as several other respectable persons and the demarcation report dated 22.02.2023 was submitted on 22.03.2023. It is not disputed that no objection was filed against the said demarcation report and the Local



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Commissioner had appeared and had been examined and also cross-examined by the present petitioner.

5. It is only thereafter that an application was filed by the present petitioner for fresh demarcation and the said application was opposed by the respondent/plaintiff on the ground that the earlier demarcation had been carried out on 22.02.2023 in the presence of both the parties and the procedure in accordance with law had been followed and that the said Local Commissioner/halka kanungo had already been examined and cross-examined before the Court and no objection had been filed by the present petitioner against the report of the said Local Commissioner. Vide order dated 13.08.2024, the said application filed by the petitioner/defendant was dismissed by the Civil Judge (Junior Division), Batala and while dismissing the same, it was observed that a perusal of the demarcation report dated 22.02.2023, which was already on the file, would show that the said demarcation report was prepared in the presence of both the parties and in the presence of other respectables, namely, Jagdish Kundal, Gurmeet Lal, Amrik Numberdar and Bachan Lal and that the road leading towards Batala to Jalandhar was taken as *pucca* point while preparing the said report and that the present petitioner was also present at the time of demarcation, however, he had refused to sign the said report. It was further observed that the present petitioner/defendant had not filed any objection to the said demarcation report dated 22.02.2023, which was placed on record on 22.03.2023 and the present application was filed after much delay, only to delay the



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proceedings.

6. Before this Court, it is not disputed that no objection was filed by the present petitioner to the said demarcation report, which was duly placed on record on 22.03.2023. It is also not disputed that the said Local Commissioner had been examined and cross-examined. Neither the report of the Local Commissioner nor the evidence given by the said Local Commissioner including cross-examination has been placed on record to even remotely show that the demarcation was not carried out in the presence of the petitioner. Moreover, the evidentiary value of the said report alongwith the evidence of the Local Commissioner would be considered by the trial Court at the stage of final arguments. There is nothing on record to rebut the observations in the impugned order to the effect that the demarcation report was carried out in the presence of both the parties and also in the presence of respectables of the village including Numberdar.

7. 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.”*

8. 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*



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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.

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

January 07, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes