



119

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

CR-7543-2024 (O&M)
Date of decision: 10.02.2025

Hind Kumar (deceased) through his LR's and another

...Petitioners

Versus

Ram Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arjun Dhingra, Advocate for the petitioners.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 15.10.2024 (Annexure P-5) passed by the Civil Judge (Senior Division), ACJM, Jagadhri vide which an application filed for appointment of some revenue officer as Local Commissioner to get demarcation of the suit property has been dismissed.

2. Learned counsel for the petitioners has submitted that the petitioners-plaintiffs had filed a suit in the year 2017 and in the present case, the appointment of Local Commissioner is necessary to identify the suit property. It is submitted that the trial Court, vide order dated 15.10.2024, had dismissed the application for appointment of Local Commissioner, which deserves to be set aside.

3. This Court has heard learned counsel for the petitioners and has



perused the paper book and finds that the impugned order dated 15.10.2024 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed.

4. A perusal of impugned order dated 15.10.2024 would show that the trial Court had dismissed the application after observing that the issues in the present case were framed on 04.10.2019 and five witnesses of the petitioners-plaintiffs had already been examined and it was thereafter the said application was filed. It was further observed that in case the petitioners wanted to establish the identity of the suit property then they should lead cogent evidence in support of the same and onus of proving the said aspect is on the plaintiffs and the process of the Court cannot be used as a tool to gather the evidence on behalf of the plaintiffs. The observations made in the impugned order could not be disputed before this Court and thus, the impugned order has been rightly passed.

5. 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.”*

6. 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. It is further brought to the notice of this Court that even the plaintiffs' evidence has been closed.

7. 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.

8. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

10.02.2025
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No