

HIGH COURT OF PUNJAB AND HARYANA
Bench: Hon'ble Mrs. Justice Alka Sarin
Date of Decision: 9th May 2024

CR-2615-2024 (O&M)

Samaj Vikash Paryatan Kendra ... Petitioner

Versus

Ajit Kumar & Anr. ... Respondent(s)

Legislation and Rules:

Article 227 of the Constitution of India

Order XXVI, Rule 9 of the Code of Civil Procedure, 1908

Subject: Revision petition challenging the trial court's order dismissing the application for the appointment of a Local Commissioner to report on the physical state of the disputed property.

Headnotes:

Revision under Article 227 – Challenging the Trial Court's decision to dismiss the application for appointing a Local Commissioner to ascertain physical status of land – Trial court held that plaintiff-petitioner must prove his case without court's assistance in gathering evidence – High Court upheld the trial court's decision, stating it does not affect the rights of the parties and is thus not revisable [Paras 1-9].

Judicial Discretion – Appointment of Local Commissioner deemed discretionary – High Court reaffirmed that refusal to appoint does not prejudice any party's rights, citing precedents in Pritam Singh v. Sunder Lal and Smt. Raksha Devi v. Madan Lal, establishing non-revisability of such orders [Para 5-6].

Evidence and Proof – Emphasis on petitioner's responsibility to prove ownership and possession without relying on court-appointed Commissioner's investigation – High Court dismisses the revision, underscoring the petitioner's obligation to substantiate claims independently [Para 8].

Referred Cases:

- M/s Allwin Infrastructure Limited, Panchkula v. M/s MAXXUS Developers & Ors. [2021(1) RCR (Civil) 177]
- Pritam Singh v. Sunder Lal [1990(2) PLR 191]
- Smt. Raksha Devi v. Madan Lal & Ors. [2017(3) PLR 249]

Representing Advocates:

Mr. A.K. Gupta for the petitioner

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ALKA SARIN, J. (ORAL)

1. The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 04.03.2024 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Loharu whereby the application filed by the plaintiff-petitioner for appointment of a Local Commissioner has been dismissed.
2. Brief facts relevant to the present lis are that the plaintiff-petitioner filed a suit for declaration to the effect that he was owner in possession of the land comprised in Khewat No.48//47 Khatoni No.68 Khasra No.88//5/3/2(2-17) situated within revenue estate of Village Sohansara, Teshil Loharu, District Bhiwani and for permanent injunction for restraining the defendant-respondent from interfering in the peaceful possession of the plaintiff-petitioner. During the pendency of the suit, the plaintiff-petitioner filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of a Local Commissioner for submitting his report about the actual and factual position at the spot. Reply was filed to the said application and vide the impugned order the said application was dismissed on the ground that it is for the plaintiff-petitioner to prove his case and that by appointing a Local Commissioner the Court could not assist the plaintiff-petitioner in collecting the evidence.
3. Learned counsel for the plaintiff-petitioner would contend that for ascertaining the factual position at the spot the appointment of a Local Commissioner was necessary and the application has wrongly been dismissed by the Trial Court vide the impugned order dated 04.03.2024. Learned counsel has relied upon the judgment passed by this Court in M/s Allwin Infrastructure Limited,

Panchkula Vs. M/s MAXXUS Developers & Ors. [2021(1) RCR (Civil) 177] to contend that a revision petition against the order dismissing the application for appointment of Local Commissioner would be maintainable.

4. I have heard learned counsel for the plaintiff-petitioner.

5. In the present case the challenge is to the order dismissing an application for appointment of the 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.”

6. 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.

7. The judgment relied upon by the learned counsel for the plaintiff-petitioner would be of no avail to him inasmuch as in the case of M/s Allwin Infrastructure Limited, Panchkula (supra) the revision petition was filed challenging the appointment of the Local Commissioner, which was dismissed on merits finding no illegality or infirmity in the impugned order.
8. In the present case the plaintiff-petitioner is seeking appointment of a Local Commissioner for demarcation of the land whereas the entire case of the plaintiff-petitioner in his plaint is for declaration to the effect that he is the owner in possession of the land in dispute and for permanent injunction restraining the defendant-respondent from interfering in the peaceful possession of the plaintiff-petitioner. That being so, it is for the plaintiff-petitioner to prove his case and he cannot take aid of the Court agency for creating evidence for him.
9. In view of the above, I do not find any merits in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

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