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(2023-1)209 PLR 070

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Alka Sarin.

SANJAY KUMAR – Petitioner,

Versus

STATE OF HARYANA and another – Respondents.

CR No. 5115 of 2019 (O&M)

Local Commissioner – Application for appointment – Dismissed – 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.

Cases referred to:-

1. (1990-2)98 PLR 191, *Pritam Singh v. Sunder Lal*.
2. (2017-3)187 PLR 249, *Smt. Raksha Devi v. Madan Lal*.

Mr. Devinder Singh, for the petitioner. *Mr. Ashok Kumar Sehrawat*, DAG Haryana.

Alka Sarin, J. (Oral) – (19th September, 2022) – The present revision petition under Article 227 of the Constitution of India has been preferred by the plaintiff-petitioner for quashing the impugned order dated 09.07.2019 (Annexure P-6) passed by the Civil Judge (Junior Division)-cum-Judicial Magistrate, Rohtak vide which the application for appointment of a Local Commissioner has been dismissed.

2. The brief facts relevant to the present lis are that the plaintiff-petitioner filed a suit for declaration along with consequential relief of mandatory injunction and permanent injunction to the effect that the plaintiff-petitioner purchased a plot measuring 25 sq. yards situated at Jhajjar Chungi Chowk vide sale deed dated 17.11.1999 comprised in khasra No.2406, 2419, moza Rohtak, Purani Jhajjar Chungi, Jhajjar Road near Kath Mandi, Rohtak and constructed a single storey shop on it as per site plan sanctioned by the Municipal

Committee, Rohtak. The suit was further amended by mentioning the correct khasra no. i.e. 2416 and 2419 instead of 2406 and 2419. It was further pleaded in the plaint that the defendant-respondents without any prior notice came on the spot with bulldozers and with other equipments to demolish the shop of the plaintiff-petitioner on account of widening the road. The shop was demolished by the defendant-respondents without acquiring the same. It was further averred that the defendant-respondents had illegally demolished the shop of the plaintiff-petitioner situated in his own land, hence, the plaintiff-petitioner prayed in the suit that the defendant-respondents be directed to construct the shop of the plaintiff-petitioner as shown in the site plan in its original conditions as the same existed on or before 20.08.2002. During the course of the evidence, PW3-Shalender, SDC, PWD (B&R), Rohtak adduced his evidence and stated before the Court that the width of the road from North to South is approximately 66 ft. and width of road from east to west is 33 ft. and the department has no ownership excess to its land described in Ex.P19 and they are ready to give up the excess area after demarcation. Hence, the plaintiff-petitioner filed an application for appointment of a Local Commissioner to visit the spot and to demarcate the suit land and also to report about the existing state of affairs at the spot. The said application was contested by the defendant-respondents on the ground that the plaintiff-petitioner is required to prove his case by leading positive evidence and a Local Commissioner cannot be appointed in this case for collecting evidence on behalf of the plaintiff-petitioner. Vide the impugned order dated 09.07.2019 the said application was dismissed.

3. Learned counsel appearing on behalf of the plaintiff-petitioner has contended that the appointment of a Local Commissioner would be necessary in order to bring on record the existing position of the suit property and would assist in the proper adjudication of the suit.

4. Learned State counsel appearing on behalf of the defendant-respondents would contend that the present revision petition is not maintainable against the order of dismissal of an application for appointment of a Local Commissioner.

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 v. Sunder Lal*¹ [(1990-2)98 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 v. Madan Lal & Ors.* ² [(2017-3)187 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, there is no illegality or irregularity in the impugned order. The revision petition is dismissed. Pending applications, if any, also stand disposed off.

R.M.S.
of.

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Petition disposed