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Deva Singh v. Mohinder Singh, 2022 PLRonline 0591

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Punjab and Haryana High Court

MRS. JUSTICE ALKA SARIN

Deva Singh v. Mohinder Singh And Ors

CR-1030-2020 (O&M)

6.04.2022

CPC O. 26 R. 9 - Local Commissioner - Appointment of - 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 would not be a revisable order.

Mr. A.S. Khinda, Advocate for the petitioner.

ALKA SARIN, J.

The present civil revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 03.12.2019 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Bholath whereby the application filed by the plaintiff-petitioner for appointment of a Local Commissioner has been dismissed.

Brief facts relevant to the present lis are that the plaintiff- petitioner filed a civil suit for permanent injunction for restraining the defendant-respondents from constructing a bus stop in front of the Government Primary School, Kamrai, Tehsil Bholath District Kapurthala and opposite to the house of the plaintiff-petitioner. During the pendency of the civil suit, an application was filed by the plaintiff-petitioner for appointment of a Local Commissioner. Reply was filed to the said application stating therein that the application was not maintainable inasmuch as the suit was pending since 14.02.2018 and written statements had also been filed. It was after long lapse that the application for appointment of a Local Commissioner was filed. It was further stated that the Local Commissioner cannot be appointed in order to procure evidence. The said application was dismissed by the Additional Civil Judge (Senior Division), Bholath on 03.12.2019.

Learned counsel for the plaintiff-petitioner would contend that the application has wrongly been dismissed inasmuch as the appointment of a Local Commissioner would help the Court in coming to a decision by ascertaining the factual position qua the proposed bus stop.

Heard.

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 getting through the Judgments cited in the reference order, we do not find that the earlier Judgment in Harvinder Kaur's case (supra) requires any re consideration. 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."

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.

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.

The revision petition is accordingly dismissed.