



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117

CR-2835-2025

Date of Decision: 23.05.2025

Arti Devi and others

.... Petitioners

Versus

Pardeep Kumar and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. RS Mamli, Advocate for the petitioners.

NIDHI GUPTA, J. (ORAL)

1. Prayer in the present revision petition is for setting aside the impugned order dated 16.04.2025 (Annexure P-6) passed by the learned Civil Judge (Senior Division), Yamuna Nagar at Jagadhri whereby the application filed by the petitioner under Order XXVI Rule 9 read with Section 151 CPC for appointment of Local Commissioner was dismissed.

2. I have heard learned counsel for the petitioners and perused the case file in great detail.

3. The prayer of the petitioner-plaintiffs is liable to be rejected in the first instance as it is established position in law, that an order allowing or rejecting application of either of the parties for appointment of Local Commissioner is not a revisable order. The present revision petition is not maintainable in view of judgment of this Court in "*Banarsi Dass v Sunita Rani @ Sarita Rani and others*", *Law Finder Doc Id # 827241*, wherein it has been held that order appointing or dismissing application for appointment of Local Commission is not



revisable. Even two Division Benches of this Court in “*Harvinder Kaur v Godha Ram*”, 1979 PLJ 562 and “*Pritam Singh v Sunder Lal*”, 1990(2) PLR 191, have held that Revision Petition is not maintainable against an order of the Court below dismissing or allowing an application for appointment of Local Commissioner.

4. It is the consistent position in law, that an order refusing to appoint Local Commissioner does not decide any issue nor adjudicate any rights of the parties for the purpose of the suit and therefore, is not revisable. Refusing to appoint, or appointing, a Commissioner has nothing to do with the rights of the parties and it is purely the discretion of the Court. If the Court refuses to appoint, or appoints, a Local Commissioner, no right of the parties is prejudiced. It has further been held that the instrumentality of Court cannot be used to collect evidence on behalf of either party. Thus, orders allowing appointment, or rejecting appointment, of Local Commissioner, are not amenable to revisional jurisdiction.

5. In the present case, the petitioner-plaintiffs have filed a suit for un-liquidated damages and for *mesne profits* for use and occupation of land measuring 19 Kanals and 18 Marlas as fully detailed in the head note of the plaint (Annexure P-1). During the pendency of the suit, the plaintiffs have filed an application for appointment of local commissioner to determine the existing position of the suit property i.e. about crops, trees and nature of land as, the defendants have denied the existing position of the suit property. Vide impugned order dated 16.04.2025 (Annexure P-6), the learned trial Court had dismissed the application for appointment of a local commissioner noticing therein



that by way of filing the present application, the petitioners have tried to create and collect evidence of possession and present state of the suit property, which is not permissible. For brevity, para No. 5 of the impugned order dated 16.04.2025 (Annexure P-6), is hereby reproduced as under:-

5. Therefore, Considering the details provided in the application and the objections raised by the defendants in response, now coming to facts in hand, looking to the averments made in the application, an attempt is made to create an image that for the benefit of finally determine the merit of the suit, by appointment of Local Commissioner. In the present set of facts, the report of the Local Commissioner is not the legal requirement. The purpose of application cannot be achieved by appointment of Local Commissioner. The conduct of the plaintiff is nothing but to create and collect evidence of possession and present state of suit property, which is not permissible and which is also outside the scope of order 26, Rule 9 of the Code. The learned trial Court has observed that no fruitful purpose would be served by appointing the Local Commissioner of the disputed property. There is no reason to interfere with in such finding as the purpose of having Local Commissioner is to gather and collect evidence. The Court cannot be an instrument in collecting evidence for the parties. In the pursuit of justice and in accordance with the provisions of the Civil Procedure Code. In view of about mentioned facts and circumstances. The present application stands dismissed and disposed of. ”

6. Learned counsel for the petitioners is unable to controvert the legal position as noticed above.

7. In view of the above present petition is **dismissed**.

8. Pending application(s) if any also stand(s) disposed of.

23.05.2025
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No