

Smt. Ulfat Vs Hardeep Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 3, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 26 Rule 9, 115
Constitution of India, 1950 â€” Article 227

Citation: (2011) 164 PLR 340

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

J.C.M. No. 18473-CII of 2011

Application is allowed subject to all just exceptions.

Civil Revision No. 4651 of 2011

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order, dated 27.5.2011,

Annexure P3, passed by learned Civil Judge, Junior Division, Kurukshetra, vide which application filed by Petitioner-Defendant under Order 26 of

the CPC for appointment of Local Commissioner was dismissed.

2. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by

learned trial Court.

3. Briefly stated, the present suit has been filed by Respondent-Plaintiff on the ground that he is in actual physical possession as owner of the

property in dispute and hence, he sought decree for permanent injunction restraining present Petitioner-Defendant from interfering in his

possession.

4. On the other hand Petitioner-Defendant has taken the plea that he is in possession of the property in dispute as owner.

5. Issues were framed. Evidence of Respondent-Plaintiff was concluded. Case was at the stage of evidence of the Petitioner-Defendant, when the

present application for appointment of Local Commissioner was moved on behalf of the Petitioner-Defendant, which was declined by learned trial

Court by observing that it was for Petitioner-Defendant to lead cogent evidence to establish his possession and that Local Commissioner cannot be

appointed to report as to which of the party is in possession of the property in dispute as the same would amount to delegating the power of the

Court to Local Commissioner to determine the real issue in dispute.

6. It has been contended by learned Counsel for the Petitioner that as both the parties are claiming possession over the property in dispute, it is

necessary to appoint Local Commissioner to report regarding existing possession of the property in dispute.

7. However, there is no force in the argument of learned Counsel for the Petitioner as there is no dispute regarding demarcation of the property in

dispute. It was for the Petitioner-Defendant to show that he is in possession of the property in dispute, which was handed over to him at the time of

registration of sale deed, as per his assertions. Court is not to collect evidence for the parties and hence, Local Commissioner cannot be appointed

to report as to who is in possession of the property in dispute.

8. Moreover law is well settled that no revision lies against the order passed by learned trial Court refusing to appoint Local Commissioner in its

discretion. Hence, discretion exercised by learned trial Court cannot be interfered by this Court in its revisional jurisdiction, either u/s 115 of the

CPC (hereinafter to be referred as 'the Code') or under Article 227 of the Constitution of India.

9. In *Pritam Singh and Anr. v. Sunder Lal and Ors.* 1990 (2) PLR 191 : 1990 PLJ 418 : 1991 (1) RRR 356 : 1990 (2) LJR 244, a Division

Bench of this Court by relying upon the decision of this Court rendered in *Harvinder Kaur v. Godha Ram*, ILR 1979 (1) P&H 147 has observed

that no revision would lie against an order passed under Order 26 Rule 9 of the Code.

10. This Court in subsequent judgment rendered in *Sumer Chand Jain v. Vishnu Bhagwan Mangla* 2006 (2) RCR 445 : 2006 (2) PLR 844 : 2006

(1) PLJ 59 by placing reliance upon *Harvinder Kaur's* case (supra) and *Pritam Singh's* case (supra) observed as under:

In two Division Bench decisions of this Court in *Harvinder Kaur* and *Another Vs. Godha Ram and Another*, and *Pritam Singh v. Sunder Lal* 1991

(1) RRR 356 : (1990-2) 98 PLR 191, it has been held that the order refusing to appoint the Local Commissioner under Order 26 Rule 9 CPC is

not revisable u/s 115 C.P.C., therefore, such an order should not be interfered now under Article 227 of the Constitution of India. In this regard, in

Hari Om v. Minish Kumar (2005-2) PLR 690, it was observed by this Court that if a revision petition u/s 115 CPC against the impugned order is

not maintainable, then by mere change in the head note the petition, the substance cannot be replaced to wriggle out from the rigors of law which is

well settled that no revision petition u/s 115 CPC is maintainable.

11. On the same point are the decisions of this Court in subsequent judgments rendered in Bant Singh alias Balwant Singh and Anr. v. Raghubir

Singh and Ors. 2008 (4) RCR 260 : 2008 (2) RCR 297 and Rajiv Kumar Batra v. Kashmiri Lal Sika 2010 (6) RCR 37 in which also it was held

that revision petition either under Article 227 of the Constitution of India or u/s 115 of the Code is not maintainable against an order dismissing

application for appointment of Local Commissioner.

12. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in

passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

13. Moreover, law has been well settled by Hon"ble Apex Court in Surya Dev Rai Vs. Ram Chander Rai and Others, , that supervisory

jurisdiction is not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors for drawing inference

like a Court of appeal. It has been observed as under:

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter

disregard Civil Revision No. 4651 of 2011(O&M) -5 of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned

thereby.

14. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.