

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2498/2019

Date of Pronouncement: 18.08.2026.

Date of Uploading: 19.08.2026.

Waryam Singh

.....Appellant(s)/Petitioner(s)

Through: Mr. G.S. Thakur, Advocate

vs

Pritam Singh and others

..... Respondent(s)

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

18.08.2026

1. Heard learned counsel for the parties.
2. The petitioner is aggrieved of order dated 03.06.2019 passed by the learned Principal District Judge, Reasi (hereinafter referred to as "the Appellate Court"), whereby his application seeking appointment of a Commissioner under Order XXXIX Rule 7 of the Code of Civil Procedure came to be dismissed. The Appellate Court observed that the petitioner was, in effect, seeking appointment of a commissioner for the purpose of collecting evidence, which is not the object and scope of the relevant provisions of the Code. It was further observed that it is not the function of the Court to collect evidence in favour of one party to the detriment of the other. Accordingly, the application came to be rejected.
3. The petitioner/plaintiff appears to have instituted a civil suit seeking a declaration that he has an easementary right over a passage measuring 9 feet in width, situated on the northern side of the plot falling under

Khasra No. 1262, Village Mari, Tehsil and District Reasi. The petitioner claims to have his residential house over 10 marlas of land. A decree of mandatory injunction has also been sought, directing the defendant to demolish and remove the construction allegedly raised over the passage/street depicted in the site plan appended to the suit.

4. The suit was instituted on 27.10.2017. The Trial Court initially directed the parties to maintain *status quo* on spot till the filing of objections. The said interim direction, however, came to be vacated by the Trial Court vide order dated 30.04.2019, inter alia, on the ground that the petitioner/plaintiff had failed to establish a *prima facie* case. The Trial Court noticed that the boundary wall already stood raised and further observed that the defendant could not be restrained from exercising his legal right to raise construction over his plot.
5. Aggrieved of the aforesaid order, the petitioner preferred an appeal before the Appellate Court at Reasi. During the pendency of the appeal, the petitioner filed an application under Order XXXIX Rule 7 CPC seeking appointment of a commissioner for spot inspection. The case set up by the petitioner was that the defendants/respondents had included the common passage within their boundary wall and had thereafter installed an iron pole during the subsistence of the *status quo* order, with a view to asserting an exclusive claim over the entire passage. According to the petitioner, a common passage exists between his house and that of the respondents.
6. The petitioner, therefore, sought appointment of a commissioner, inter alia, to ascertain the factual position on spot, including the circumstances relating to the installation of the pole by the respondents.

The Appellate Court, by virtue of the order impugned, declined the prayer on the ground that it was for the petitioner to prove his case by leading evidence during the trial and that the process of the Court could not be invoked for the purpose of creating or collecting evidence on behalf of a party.

7. Learned counsel appearing for the respondents has opposed the petition and submitted that, in view of subsequent developments, the present petition has been rendered infructuous. It is submitted that the suit has already proceeded to the stage of recording of evidence. It is further pointed out that during the pendency of the suit, the petitioner filed yet another application on 03.10.2024 seeking appointment of a commissioner, which too came to be dismissed by the Trial Court vide order dated 29.07.2026.
8. While dismissing the subsequent application, the Trial Court noticed that the prayer for appointment of a commissioner pertained to the very passage which forms the subject matter of the suit. The Trial Court further observed that appointment of a commissioner is intended to assist the Court in elucidating matters in controversy where such assistance is genuinely required for effective adjudication and that the said provision cannot be invoked by a party merely to procure evidence with a view to improving its case.
9. When confronted with the aforesaid subsequent developments, learned counsel for the petitioner submitted that the appeal against the order vacating *status quo* is still pending before the Appellate Court and, therefore, the present petition deserves to be considered on its merits.
10. Heard learned counsel for the parties and perused the record.

11. The principal grievance projected by the petitioner, who is the plaintiff before the Trial Court, is that during the subsistence of the interim *status quo* order, the defendant allegedly violated the same by erecting a pole on the disputed passage. It was in this background that the petitioner sought recourse to Order XXXIX Rule 7 CPC for appointment of a commissioner. The said application came to be rejected by the Appellate Court. Subsequently, another application moved by the petitioner during the pendency of the suit seeking appointment of a commissioner has also been dismissed by the Trial Court.
12. Once the suit has proceeded to the stage of recording of evidence, it is for the parties to prove their respective cases by leading admissible evidence before the Trial Court. Whether inspection of the property forming the subject matter of the suit is necessary for the proper adjudication of the controversy is a matter falling within the discretion of the Court concerned. Such discretion, needless to state, is required to be exercised judiciously and in accordance with law, having regard to the facts and circumstances of each case.
13. Learned counsel for the respondents has further pointed out that, apart from the application moved before the Appellate Court which came to be rejected by the impugned order, the petitioner had earlier moved a similar application before the Trial Court. The said application was allowed and a commissioner was appointed, who conducted the spot inspection and submitted his report before the Trial Court. It is stated that the said report has neither been set aside nor successfully assailed by either of the parties. Despite the existence of the said report, the petitioner again filed an application before the Trial Court on

03.10.2024 seeking appointment of a commissioner, which came to be dismissed.

14. In view of the fact that a Commissioner had already been appointed by the Trial Court and his report forms part of the record, the contention of learned counsel for the petitioner that a further spot inspection was necessary to enable the Appellate Court to determine whether the interim order passed by the Trial Court required modification or interference loses much of its significance.
15. During the course of hearing, learned counsel for the respondents also invited the attention of this Court to the order dated 29.07.2026 passed by the Trial Court declining the subsequent application filed by the petitioner for appointment of a commissioner. The record further indicates that during the pendency of the suit, an earlier application seeking appointment of a commissioner had been allowed by the Trial Court vide order dated 08.11.2011, pursuant where to a commissioner was appointed and his report was placed on record. Thereafter, the Trial Court proceeded to decide the application for interim relief vide order dated 30.04.2019.
16. It, therefore, emerges that a commissioner's report was already available on the record prior to the decision of the Trial Court on the application for interim relief. Thereafter, the petitioner moved another application before the Appellate Court seeking appointment of a commissioner, which came to be rejected by the order impugned in the present petition. A subsequent application seeking similar relief during the pendency of the suit has also been rejected by the Trial Court vide order dated

29.07.2026, which order, as stated before this Court, has not been assailed by the petitioner so far.

17. The suit has, in the meantime, proceeded to the stage of recording of evidence. In these circumstances, appointment of another Commissioner at this stage would serve no useful purpose. The petitioner is required to establish his case before the Trial Court by leading evidence in accordance with law and cannot invoke the process of appointment of a commissioner merely for the purpose of procuring or creating evidence in support of his case.
18. Having regard to the subsequent developments noticed hereinabove, particularly the existence of the earlier Commissioner's report, rejection of the subsequent application for appointment of a commissioner, and the fact that the suit has already proceeded to the stage of evidence, no useful purpose would be served by examining the challenge to the impugned order dated 03.06.2019 at this stage.
19. Accordingly, the present petition, having been rendered infructuous by subsequent events, is *dismissed* as such.
20. Interim direction(s), if any, shall stand vacated.

(Sanjay Parihar)
Judge

Jammu
18.08.2026
Rahul Sharma

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No.