

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 486/2025

Decided on: 17.09.2026

Ram Chand

.....Petitioner

Versus

Amar Nath & ors.

...Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Dipankar Bagga, Advocate.

For the Respondents: Ms. Kamaskshi Tarlokta, Advocate, for
respondent No.1.

Romesh Verma, Judge (oral)

The instant petition arises out of order, dated 12.06.2025, as passed by the learned Civil Judge, Barsar, District Hamirpur, H.P., whereby an application filed by the plaintiff/petitioner under Order 26 Rule 9 CPC read with Section 151 CPC for appointment of Local Commissioner, came to be dismissed.

2 The facts, as emerge in the instant case are that the present petitioner/plaintiff filed a suit before the learned trial Court for permanent prohibitory injunction restraining the

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

defendants, their agents, servants and family members from encroaching the vacant land shown in the site plan as “ABCD” or raising construction in any manner whatsoever or changing the nature of land comprised in Khata No. 59, Khatauni No. 60, Khasra No. 1463, measuring 0-04-05 hectares, situated in Tikka Karnyot, Tappa Dhatwal, Sub Tehsil Dhatwal at Bijhari, District Hamirpur, H.P. As per case set up by the plaintiff/petitioner, he is owner in possession of the suit land, whereas the defendants are utter strangers and have got no legal right over the suit land. The defendants are bent upon to occupy the suit land and they are openly threatening the plaintiff that they would cover the entire suit land by raising the construction forcibly. The defendants on 01.11.2013 started digging the suit land for the purpose of raising construction and removed the entire “Bannas” on the spot. No valid demarcation was ever given by the revenue agency on the spot, hence a Local Commissioner is required to be appointed to visit the spot and demarcate the suit land in the presence of the parties. Under such circumstances, the plaintiff filed the suit, as aforesaid.

3 The said suit came to be resisted by the defendants, by filing written statement, wherein after taking various preliminary objections, they refuted and specifically denied the

allegations, as levelled in the plaint, and prayed dismissal of the suit.

4 After framing of the issues, learned trial court directed the parties to adduce evidence in support of their respective claims and after conclusion of the evidence, on 10.06.2022 petitioner/plaintiff filed an application under Order 26 Rule 9 of CPC for appointment of Local Commissioner to visit the spot and demarcate the suit land, wherein it was averred that there is a boundary dispute inter se the parties and defendants have removed all the old 'Bannas' over the spot and they are trying to occupy the land of the plaintiff forcibly, therefore, it was necessary to order for demarcation of the land so that boundary between the land of the plaintiff and defendants can be ascertained or fixed on the spot.

5 The said application was resisted by the defendants/respondents, by filing a reply, wherein they prayed for dismissal of the same.

6 The learned trial Court vide its order, dated 12.06.2025 dismissed the application, as filed by the plaintiff/petitioner. Feeling aggrieved, the plaintiff/petitioner has approached this Court by filing the instant petition under article 227 of the Constitution of India.

7 It is contended by Mr. Dipankar Bagga, learned counsel for the petitioner, that the impugned order is erroneous and liable to be quashed and set aside. He has submitted that the learned trial court has not appreciated the point in controversy in its true perspective. He has urged that since there is a boundary dispute inter se the parties, therefore, only order, which could have been passed by the learned trial court, was to appoint Local Commissioner in order to adjudicate the controversy in hand. He would submit that after accepting the present petition, the application, as filed by the petitioner/plaintiff under 26 Rule 9 of CPC, is liable to be accepted.

8 On the other hand, Ms. Kamakshi Tarlokta, learned counsel for respondent No. 1, has defended the impugned order and submitted that this court, while exercising the powers under Article 227 of the Constitution of India, will not disturb the well-reasoned order as passed by the learned trial Court.

9 I have heard the learned counsel for the parties and have also gone through the material available on record.

10 In the present case, as observed above, the plaintiff/petitioner has approached the learned trial court seeking permanent prohibitory injunction against the defendants qua the suit land with the prayer that in case the defendants

succeeded to raise superstructure during the pendency of the suit, then suit for possession by way of demolition on the ground that the defendants being strangers to the suit land on 1.11.2013 started digging the same and even removed the entire Bannas on the spot while threatening him to occupy the suit land forcibly. In para 7 of the plaint, the plaintiff/petitioner has prayed that a Local Commissioner be appointed to visit the spot and demarcate the suit land in the presence of the parties.

11 Learned counsel for the parties have fairly conceded that now the case is fixed for final arguments and the suit is pending adjudication before the learned trial court for the last about 11 years.

12 The provisions of order 26 Rule 9 of CPC read as follows:

“9. Commissions to make local investigations-*In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

13 The provisions of Order 26 Rule 9 of the CPC categorically lay down that in case the Court deems fit to conduct a local investigation for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

14 The plea of encroachment has been raised by the petitioner/plaintiff, therefore, it was incumbent upon him to have demonstrated from the record that any kind of encroachment has been made by the defendants. Merely, on the asking of the party, Local Commissioner cannot be appointed in a routine manner.

15 It is a basic principle of law that a person, who alleges has to prove his case but allegations of interference and encroachment after passing of the injunction order have been levelled and raised by the plaintiff. Therefore, it is incumbent upon the plaintiff to substantiate his case by leading and placing material documents on record. The plaintiff cannot take an aid of the Court to collect evidence in order to corroborate his case. The application for appointment of Local Commissioner cannot be allowed in a routine manner and the same can be allowed in

those cases which are bonafide for the determination of the controversy in question. Merely on the asking of the parties, the Local Commissioner cannot be appointed.

16 The plaintiff/petitioner has to stand on his own legs by adducing independent and reliable evidence and he cannot invoke the provisions of Order XXVI and Rule 9 of CPC and call upon the Court to generate evidence for him.

17 It is too well-known that the Court is not expected to create evidence for any of the parties to the *lis*. It is for the plaintiff to prove that the defendants have encroached upon his land and this he can do so by leading evidence as is permissible under the Evidence Act.

18 This Court in **CMPMO No.272 of 2019** titled as **Ram Nath and another vs. Kuldeep Singh and others**, decided on 25.06.2019 as held as follows:

“14. Order 26, Rule 9 of the Code inter alia provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as it thinks fit directing him to such investigation and to report thereon to the Court.

15. In my considered view, primarily whenever any order is passed, under Rule 9 of Order 26 of the Code, the satisfaction has to be of the Court as to whether local investigation for the purpose of elucidating any matter in dispute is necessary or not. This satisfaction cannot be of the plaintiffs or defendants. The plaintiff or the defendant

has to stand on its own legs and provisions of Order 26, Rule 9 of the Code cannot be used to garner or gather evidence for them through the Court process. This is exactly what has been held by the learned Court below by way of the impugned order. Learned Court has held and rightly so that onus is upon the plaintiffs to prove their case and the Court cannot lend a helping hand and assist the plaintiffs to prove their case. These findings returned by the learned Court below cannot be said to be illegal as they are in consonance with the spirit of law with regard to the interpretation of Order 26, Rule 9 of the Civil Procedure Code. Plaintiffs cannot be permitted to a local commissioner appointed simply because they have not been able to lead cogent evidence to prove their case. That is not the intent of Order 26, rule 9 of the Code.”

19 From a perusal of the same, it is clear that Order XXVI Rule 9 CPC is not a panacea that can be used by litigants as a tool whenever they feel that they are not in a position to prove their case.

20 Similar view was taken by this Court in **CMPMO No.195 of 2024** titled as **Kewal Krishan vs. Gram Sabha Tikka and another**, decided on 19.06.2024, wherein it was observed as under:

“5. Having gone through the order passed by the learned Court below and having heard learned Senior Counsel for the petitioner/plaintiff as also learned Counsel for the respondent/defendant, this Court does not find any perversity in the impugned order. When it is a matter of

record that the petitioner had sought amendment in the suit on the ground that during the pendency of the suit, certain part of the suit land stood encroached by the defendant, this pre-supposes that the petitioner was aware of his boundaries and only thereafter, he levelled allegations against the respondent of encroaching upon his land. In this background, but natural, the petitioner cannot be permitted to call upon the Court by way of appointment of a Local Commissioner to create evidence to prove his allegation as to whether part of the suit land mentioned in the application filed under Order 26, Rule 9 of the Code of Civil Procedure stood encroached upon by the defendant or not.”

21 As per the exposition of law and the consistent legal propositions when any suit has been filed on the premise that the defendant has made encroachment, recourse cannot be held to be appointment of Local Commissioner for demarcating the suit land and it is for the applicant to establish this fact by leading independent evidence. The initial onus is upon the applicant to establish the case of encroachment by leading cogent and authentic evidence. Otherwise also, the Local Commissioner cannot be appointed for the collection of the evidence and for determining the encroachment made by the respondent and if the Court appoints Local Commissioner in the present case, then certainly it would amount to collection of the evidence with the aid of Court which cannot be accepted.

22 Obviously, the application as filed by the plaintiffs/respondents is just to collect the evidence by taking aid of the Court. The said principle of law has been enunciated by this Court in ***Liaquat Ali vs. Amir Mohammad & others Latest Himachal Law Judgments 2016 (HP) 831***, wherein it was held as under:

“3. Learned trial court dismissed the application by assigning the following reasons:

“It was laid down by Hon’ble High Court in Divakar Dutt Vs. Ranjit Singh 1997 (1) SLJ 242 that ‘when any suit has been filed on the premise that respondent has made encroachment, recourse cannot be held to be appointment of local commissioner for demarcating the suit land and it is for the applicant to establish this fact by leading independent evidence. Similar is the judgment in Jeet Ram Vs. Sita Ram, 2002 HLJ 1173. Therefore, in view of this binding precedent, local commissioner cannot be appointed and it is for the applicant to establish the claim of encroachment by leading independent evidence. Otherwise also, the local commissioner cannot be appointed for the collection of evidence and for determine the encroachment made by the respondent and if court appoints the local commissioner in the present case, then it would amount to collection of evidence with the aid of court which cannot be accepted. References be made to Institute of Engineers Vs. Vishnu Pada, AIR 1978 Cal 296.”

4. Petitioner has assailed the aforesaid order on various grounds taken in the petition. Before proceeding to the merits of the matter, it needs to be reiterated that the object of local investigation is not to collect evidence, but to obtain such material, which from its peculiar nature, can be had

only at the spot. The object of order 29 Rule 9 CPC is not to assist a party to collect evidence.

5. What is the measurement of the suit passage and whether the same has been obstructed or encroached upon are matters which were required to be proved by the petitioner by leading cogent and convincing evidence to this effect and, therefore, recourse to the appointment of Local commissioner for demarcating the suit land at this stage is impermissible as both the parties have led their evidence. Obviously the application now preferred by the petitioner is mischievous as the petitioner wants the court to collect evidence for him through the Local commissioner.”

23 As observed by the learned trial Court, during cross-examination of the plaintiff/petitioner, it has come on record that he took demarcation of the suit land on 01.11.2015, which was confirmed on 27.11.2015 and thereafter, he himself raised the objections and preferred an appeal before the SDM and the said appeal also came to be dismissed.

24 It is contended by the learned counsel for the plaintiff/petitioner that the appeal is pending before the superior Court.

25 As rightly pointed out by the learned counsel for respondent No.1, that the said fact is missing in the pleadings as filed by the petitioner. In the plaint, there is no averment with respect to the fact that earlier the plaintiff/petitioner had also obtained demarcation report.

26 This Court will not come to the aid of the petitioner to collect evidence. A duty is cast upon the petitioner to discharge the onus of encroachment. The trial is pending before the trial Court for a considerable period and it seems that endeavour of the petitioner is to adduce evidence in his own favour with the help of Court.

27 Learned trial court has rightly appreciated the controversy at hand while observing that once the land is demarcated, no further demarcation can be carried out unless previous one is set aside. .

28 The onus to prove the alleged encroachment, if any, by the defendants, lies upon the plaintiff/petitioner. The allegations, as made in the application are general and routine in nature and merely on the bald assertion of the plaintiff/petitioner, the Court will not come to aid of the plaintiff/petitioner to collect evidence in order to prove the alleged encroachment or to fill up lacunas.

29 The Hon'ble Supreme Court has repeatedly held that while invoking provisions of Article 227 of the Constitution of India, High Court will not act as a appellate court and it is only in those cases, where the impugned order is perverse or which has been passed without any jurisdiction, the High Court will

exercise the jurisdiction under Article 227 of the Constitution of India.

30 The power under Article 227 is limited to see that the Courts below function within the limits of their authority or jurisdiction. The High Court cannot interfere with the findings of fact recorded by the subordinate Court or Tribunal while exercising its jurisdiction under Article 227. The Hon'ble Apex Court has held that, over the last 50 years, it has consistently been observed that the limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with findings of fact or by setting aside the judgments of the courts below on merits.

31 Hon'ble Apex Court in **Civil Appeal No. 2226 of 2010**, titled **State of Haryana & others** vs. **Manoj Kumar**, decided on 09.03.2010 has held as follow:-

“23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is

merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of *Mohd. Yunus v. Mohd. Mustaqim & Others* (1983) 4 SCC 566. The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. for this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. This court again clearly reiterated the legal position in *Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi* (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this court in *Rena Drego (Mrs.) v. Lalchand Soni & Others* (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

28. In *Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others* (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.”

32 To the similar extent, the Hon’ble Apex Court in **Civil Appeal No. 3072 of 2022**, titled as **Ibrat Faizan vs. Omaxe Buildhome Private Limited**, decided on 13.05.2022 has held as follows: -

“14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58 (1) (a) (iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same

time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97, which has been consistently followed by this Court (see the recent decision of this Court in the case of Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigor of the powers to be exercised under Article 227 of the Constitution of India.”

33 In the considered opinion of this court and in view of the observations as made hereinabove, this court does not see any jurisdictional error, perversity, or illegality in the impugned order.

34 Consequently, in view of aforesaid exposition of law and discussion, the present petition, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending miscellaneous application(s), if any, also stands disposed of.

35 Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case.

17th September, 2026
(pankaj)

(Romesh Verma)
Judge