

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

2025.PHHC.002762



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CR-84-2025 (O&M)

Date of decision: 10.01.2025

Harpreet Kaur

...Petitioner.

Versus

Paramjeet Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. K.D.S. Hooda, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 12.11.2024 (Annexure P-1), passed by the trial Court, vide which application under Order 26 Rule 9 CPC for appointment of Local Commissioner, was dismissed.

2. The brief facts relevant for adjudication of the present revision petition are that the plaintiff filed suit for permanent injunction for restraining the defendants from demolishing a common wall between their properties and also from restraining the defendants from interfering into possession of the plaintiff over the suit property. Mandatory injunction was also sought for directing the defendants to reconstruct the wall as it was existing at the time of filing of the suit, if the defendants succeed in

demolishing the wall.

3. During pendency of the suit before the trial Court an application was moved by the petitioner under Order 26 Rule 9 CPC for appointment of Local Commissioner and it was prayed that Local Commissioner be appointed and he be directed to report regarding existing possession and for measuring the houses of plaintiff and defendant. It was alleged that the plaintiff had purchased property bearing house No.580 situated at Model Town, Panipat and defendants have also purchased the property adjoining to the house of the plaintiff. The plaintiff is in less possession of the property which has been purchased by her and defendants are in excess share of the property which was purchased by them. Defendants want to occupy the land marked by letters A, B and they have raised unauthorized construction on some portion of the wall in dispute and are threatening to occupy the remaining wall. It was alleged that the possession of plaintiff and defendants over the property was to be proved through the report of Local Commissioner.

4. Notice of the said application was given to the defendants who resisted the same by filing the reply and it was alleged that contents of the application did not match with the pleadings of the plaintiff. There was no question of demarcating the property as it was not the case of the plaintiff that defendants/ respondents have occupied the property of the plaintiff.

5. The said application filed by the petitioner/ plaintiff for appointment of Local Commissioner was dismissed by trial Court vide order dated 12.11.2024. Aggrieved against the said order, the petitioner has knocked the doors of this Court by way of filing the present revision

petition.

6. Learned counsel for the revision petitioner has contended that the petitioner filed the present suit against respondents/ defendants for restraining them from demolishing the wall and the report of the Local Commissioner was necessary for better appreciation of facts and circumstances of the case. He has contended that the plaintiff is in less possession of the property which has been purchased by her and defendants are in excess share of the property which has been purchased by them. After purchase of the property the defendants with dishonest intention want to occupy the wall in question and have raised unauthorized construction over some portion of the wall in dispute and are also threatening to occupy the remaining wall. He has further argued that the petitioner/ plaintiff has to prove the possession of her property as purchased by her and possession of defendants is also to be seen by the Court through report of Local Commissioner and the report of Local Commissioner will bring on record the fact that whether defendants are in possession of the land according to the sale deed executed in their favour. Only the report of the Local Commissioner will depict the existing position of the property and measurement of both the houses of the plaintiff and defendants, which will help in effectively adjudicating the controversy between the parties. He has submitted that learned trial Court has failed to appreciate the fact that the petitioner/ plaintiff want to bring on record the exact measurement of plots/ houses of the plaintiff and defendants and the encroachment apprehended by the petitioner/ plaintiff, for which appointment of Local Commissioner is essential and has prayed that the aforesaid application be allowed.

7. I have heard learned counsel for the petitioners and have gone through the relevant record.

8. By way of filing the present application under Order 26 Rule 9 CPC, plaintiff seeks appointment of Local Commissioner for measuring the suit property of the plaintiff and of the defendants, for determining the possession of both plaintiff and defendants and regarding the actual position of both the houses at the spot.

9. This is not the case of the plaintiff/ petitioner that defendants/ respondents have encroached over the property of the plaintiff, for which any demarcation is required. Prima facie it appears to be dispute regarding common wall shared between houses of plaintiff and defendants. The present suit is a suit for permanent injunction for restraining the defendants from demolishing the common wall and for mandatory injunction directing reconstruction of the same in the alternate if the said wall is demolished. Learned trial Court has rightly observed that as far as the question of possession is concerned, it is settled law that a Local Commissioner cannot be appointed for determining the state of possession. It has also been rightly observed that as per the present application plaintiff wants to get measurement of both the houses, but no plausible explanation has been given as to how the same would be material in adjudicating the controversy in the present suit. A Local Commissioner cannot be appointed for collecting the evidence for the parties rather parties have to prove their own case by leading the cogent evidence.

10. Thus, there being no illegality or infirmity in the impugned order, no interference therewith is called for while exercising the revisional

jurisdiction. The present revision petition being bereft of any merits stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

10.01.2025

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No