



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

209

CR-1385-2019 (O&M)
Date of decision : 21.07.2025

Nirmal Kaur

..... Petitioner

versus

Naresh Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Parvinder Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against order dated 06.02.2019 passed by Civil Judge (Jr. Divn.), Garhshankar whereby application filed by plaintiff seeking appointment of Expert Revenue Officer to visit the spot and effect the measurement of the suit property stands declined.

2. Plaintiff filed suit for recovery of Rs.1,23,600/- paid by plaintiff to the defendant as sale consideration alleging that 1.5 marlas of the land which was subject matter of sale deed was found to be less on the spot.

3. As per plaintiff, she and her daughter Reena Rani believed the representation made by the defendant of being in separate possession of land measuring 12 marlas as detailed out in the plaint. Satisfied with the representation made by the plaintiff, defendant agreed to purchase the said 12 marlas from plaintiff @ Rs.80,000/- per marla.



06 marlas was purchased by the plaintiff and 06 marlas was purchased by her daughter vide separate registered sale deed dated 10.10.2024 for a sum of Rs.4,80,000/- each. Per plaintiff, her daughter Reena Rani started construction and got the total area demarcated. It is then that she came to know that the total area was less than 12 marlas and in fact it was 10.5 marlas. Daughter of the plaintiff covered her share i.e. 06 marlas and raised construction thereupon. Plaintiff asserts that since in the sale deed, defendant had taken responsibility that in the event of any loss caused to the vendee, she will compensate with money, plaintiff is entitled to get compensated for the deficient area.

4. Suit was contested by the defendant. Defendant denied that there was any deficiency in the area handed over to the plaintiff.

5. Issues were framed. Both the parties led their respective evidence. At the fag end of the trial, present application was moved which stands declined by the Trial Court holding that the plaintiff filed suit claiming that the land delivered to her pursuant to sale deed, was less in area. She had an opportunity to place on record the demarcation on the basis of which the suit was filed. Having failed to do so, the application filed at the fag end, has no merit.

6. Counsel appearing for the petitioner-plaintiff submits that the Trial Court erred in declining the prayer made by the plaintiff. He submits that it is only the revenue authorities, who can resolve the riddle by demarcating and measuring the property in question. The Trial Court ought to have allowed the application for effective and proper adjudication of the suit.



7. *Per contra*, counsel for the respondent submits that in fact the present application has been moved asking the Court to collect evidence on behalf of the plaintiff and is in nature of seeking appointment of the Local Commissioner under Order XXVI Rule 9 CPC. He relies upon ratio of law laid down by Division Bench of this Court in ***Harvinder Kaur and another vs. Godha Ram and another, 1979 AIR (Punjab & Haryana) 76*** to submit that the present revision petition against dismissal of the application is not maintainable, as the same does not decide any of the rights of the parties.

8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. The entire suit of the plaintiff is based upon positive assertion that the plaintiff got the land demarcated which was found to be deficient and was not as per the covenants contained in the sale deed. Defendant being bound by the terms of the sale deed to indemnify plaintiff for the loss, she is entitled for recovery of Rs.1,20,000/-. In order to prove the same, plaintiff is required to prove that the land delivered to her on the spot is deficient and less than land sold to her by way of registered sale deed, she needs to discharge onus. Thus, it was for the plaintiff to lead evidence to the said effect.

10. The plaintiff under the garb of appointment of the Revenue Officer, cannot be asked the Court to marshal evidence on her behalf and to leading her to an advantageous position.

11. The order does not adjudicate upon any right or obligation of any party to the suit. Thus, the present revision petition under Article 227 is not maintainable. So is the view taken by Division Bench



of this Court in **Harvinder Kaur's case (supra)**, observing as under:-

"7. In this situation, it has now to be found out as to which type of interlocutory orders would be revisable by this Court in exercise of its powers under S. 115 of the Civil P. C.? To this question, the answer is available from the judgment of their Lordships of the Supreme Court in Baldevdas Shivlal v. Filmistan Distributors (India) Pvt. Ltd., AIR 1970 SC 406, wherein after considering S. S. Khanna's case (AIR 1964 SC 497) it was observed thus:--

"But it was not decided in S. S. Khanna's case, (1964) 4 SCR 409: (AIR 1964 SC 497) that every order of the Court in the course of a suit amounts to a case decided. A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a case decided within the meaning of S. 115 of the Civil Procedure Code."

8. In the light of the aforesaid observation, without dilating any more on this subject, the meaning that can be given to the explanation is that an order made in the course of a suit or proceeding would be revisable only when it determines or adjudicates some right or obligation of the parties in controversy. Thus, a revision would lie against an interlocutory order only if it determines or adjudicates some right or obligation of the parties in controversy. However, even after the satisfaction of the aforesaid test the power of revision would be exercisable by this Court subject to the limitations put under sub-sec. (1) and the proviso to S. 115 of the Civil Procedure Code.

9. Adverting to the facts of the present case, we find that the trial Court has only rejected the application for the issuance of a commission on the ground that issue No. 3 could be proved by producing the relevant record and that demarcation was not necessary. From these observations, it is clear that the learned Subordinate Judge did not decide any issue nor did he adjudicate for the purposes of the suit some right or obligation of the parties in controversy.

10. Adverting to the case law, reference may be made to M/s. Goverdhan Das Gopi Nath's case (1975 Cur LJ 744) (Punjab) the only judgment on which reliance had been placed by Mr.

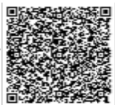


*Sarin and which decision necessitated the reference to the larger Bench. In view of our aforesaid discussion, we are, with utmost respect, unable to agree with the view taken in that decision. The learned Judge, on the basis of the judgment of the Supreme Court in S. S. Khanna's case (AIR 1964 SC 497) and a Full Bench judgment of this Court in **M/s. Sadhu Ram Ball Ram v. M/s. Ghansham Dass Madan Lal, AIR 1975 Punj & Har 174**, arrived at the conclusion that the order rejecting the application of the defendant for examining two witnesses residing in Bombay on commission falls within the expression "case decided".*

11. As has already been observed in the earlier part of the judgment, S. S. Khanna's case stands explained by their Lordships of the Supreme Court in Baldevdas Shivilal's case (AIR 1970 SC 406) and in view of the test laid down therein, the order of the Court should result into adjudication of some right or obligation of the parties in controversy during the course of a suit or other proceeding. The order declining to issue a commission of the type mentioned in M/s. Goverdhan Das Gopi Nath's case does not satisfy that test. It may further be observed that the facts of M/s. Sadhu Ram Ball Ram's case were different as in that case the onus of an issue had been wrongly placed and while deciding that question it was held that such an order would be revisable.

*12. In view of the aforesaid discussion, we hold that no revision would lie against an order passed under O. 26, R. 9 and the view taken in M/s. Mohinder Kumar Rajinder Parkash ((1976) 78 Pun LR 280); Dalmir Singh alias Dalmira 1976 Rev LR 654 (Punj & Har) and **Mangal Singh v. Plara Lal, (1971) 73 Pun LR 531** cases lays down the correct law.*

13. Before parting with the judgment, it may, however, be made clear that it cannot as a general rule be laid down that in no case a revision would lie against an interlocutory order passed under any other provision of O. 26, and that it would be on the facts of each case that it will have to be found out whether the interlocutory order, against which a revision is sought to be filed, has adjudicated for the purposes of the suit some right or obligation of the parties in controversy or not."



11. In view of the aforesettled proposition of law, this Court finds that the Court cannot be allowed to be used as an agency by a party to conclude evidence on her behalf. Thus, no fault can be found with the order passed by the Trial Court dismissing the application filed by the plaintiff for appointment of Revenue Officer to demarcate the land.
12. Finding no merits in the present revision petition, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

21.07.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No