



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

205

CR-1850-2024 (O&M)

Date of Decision : 10.07.2025

SHYAM SUNDER

.... Petitioner

VERSUS

MOHIT KUMAR LAL AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Navmohit Singh, Advocate for the petitioner.

Mr. Prateek Sodhi, Advocate and
Mr. Raghujeet Singh Madan, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 15.02.2024 (Annexure P-3) passed by the learned Civil Judge (Senior Division), Sonapat whereby the application filed by the plaintiff-respondents for appointment of a Local Commissioner for finding out encroachment over the 1/3rd share of land was allowed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for declaration, possession with consequential relief of permanent injunction. In the plaint in para No.4 it had been averred as under :

'That the plaintiff No.2 Harish Kumar sold his 1/3rd share i.e. 131 Square Yards in the above mentioned property to the defendant vide sale deed No.6840 dated

19.02.1997 and thereafter, the plaintiff No.1 Mohit Kumar also sold his 1/3rd share i.e. 131 Square Yards in the above mentioned property to the defendant vide sale deed No.2644 dated 27.05.2005. The copies of all the three sale deeds bearing No.4343, 6840 and 2644 are attached. After purchase of 2/3rd share, the defendant became owner of portion shown by letters 'AGHC' in the site plan shown in blue colour total measuring 262 Square Yards having dimensions East – 67 feet 3 Inch, West – 78 feet 8 Inch, North – 31 feet and South – 33 feet 8 Inch and Smt. Urmila Devi remained owner of 1/3rd share i.e. approximately 131 Square Yards shown by letters 'GBDH' shown in red colour in the site plan East – 60 feet 8 Inch, West – 67 feet 3 Inch, North – 20 feet and South – 16 feet 10 Inch'.

In the written statement on merits it had been stated in para No.4 as under :

'That the contents of para No.4 of plaint are correct to the extent that Harish Kumar and Mohit Kumar sold their shares to the answering defendant and the share of the shareholders are joint one in the suit property and the suit property is still joint. Rest of the para is wrong and denied.'

However, in reply to para No.15 of the plaint, it had been stated in the written statement that the defendant-petitioner had never raised any threat to any co-sharer with the intention to change the nature of the suit property and that the plaintiff-respondents would be at liberty to demarcate the portion again and has specifically stated that he is not in occupation of portion 'EBDF'. The defendant-petitioner herein was in possession of the property shown as 'ABCD' in the site plan (Annexure R-2) appended with the application being CM-12491-CII-2025. 'AGCH' being the portion owned by him and 'GBHD' being the portion which was taken on rent by him. The case as set up by the plaintiff-respondents was that area marked 'GEHF' has been encroached by the defendant-petitioner herein. The said fact was denied by the defendant-petitioner. He, however, has not denied the averments made in para No.4 regarding the dimensions of the area purchased by the defendant-petitioner and the plaintiff-respondents vide sale deeds bearing No.4343, 6840 and 2644. During the evidence of the plaintiff-respondents, an application filed for appointment of a Local Commissioner for demarcation of the encroached land was allowed vide the impugned order dated 15.02.2024 which order has been challenged by the defendant-petitioner herein.

3. The learned counsel for the defendant-petitioner would contend that the Local Commissioner cannot be asked to demarcate the encroachment as that is the domain of the Court and at best the Local Commissioner can give the state of affairs. Learned counsel has relied upon the judgments passed by this Court in **M/s Allwin Infrastructure Limited**,

Panchkula V/s M/s Maxxus Developers & Ors. [AIR 2021 P&H 22] and Ganpat Gir Chela Bhudh Gir Chela Som Gir V/s Deh Sambhal Ghar Atte Deh Sanskar Sudhar Committee & Ors. [2020 (3) RCR (Civil) 640].

It is further the contention of the learned counsel that as per the pleadings of the plaintiff-respondents there was an oral partition qua which no evidence was led.

4. *Per contra*, learned counsel for the plaintiff-respondents has contended that in the plaint specifically the dimensions were mentioned of the area in possession of the plaintiff-respondents and in possession of the defendant-petitioner herein and the site plan was also appended. It was specifically stated in para No.4 that after purchase of 2/3rd share the defendant-petitioner herein became owner of portion shown by letters 'AGHC' in the site plan shown in blue colour measuring 262 square yards having dimensions East – 67 feet 3 Inch, West – 78 feet 8 Inch, North – 31 feet and South – 33 feet 8 Inch and Smt. Urmila Devi (predecessor-in-interest of the plaintiff-respondents herein) remained owner of 1/3rd share i.e. approximately 131 square yards shown by letters 'GBDH' shown in red colour in the site plan East – 60 feet 8 Inch, West – 67 feet 3 Inch, North – 20 feet and South – 16 feet 10 Inch. In response to para No.4 of the plaint neither there is any specific denial to the averments made in the said para nor there is any denial to the property as depicted in the site plan which is appended as Annexure R-2 along with the application being CM-12491-CII-2025 nor the dimensions have been denied. It is further the contention that in any case the revision petition itself would not be maintainable in view of the

order passed by the Hon'ble Supreme Court in **Rajinder & Co. V/s Union of India & Ors. [2003 (1) RCR (Civil) 755]** and the judgment passed by a Coordinate Bench of this Court in **Swaran Singh (deceased) through his LR V/s Gurbakash Singh [2019 (2) PLR 306]**.

5. Heard.

6. In the present case the plaintiff-respondents, at the time of leading their evidence, filed an application for demarcation of the alleged encroachment by a Local Commissioner. In para No.3 of the application it has been stated that as per the sale deeds No.6840 dated 19.02.1997 and No.2644 dated 27.05.2005, 2/3rd share was sold to the defendant-petitioner and 1/3rd remained with the plaintiff-respondents. In response even to the application it has simply been stated that there is no encroachment and the property remained joint and has not been partitioned. In the written statement, as discussed above, in para No.4 there is no denial of the averments made in para No.4 of the plaint. Even otherwise the appointment of a Local Commissioner is always to ascertain the state of affairs and is not an adjudication of the matter. The adjudication has to be done by the Court before whom the matter is pending and the Local Commissioner would only prepare the report on the state of affairs. The Local Commissioner's report also is not final as the defendant-petitioner would always have the right to file his objections to the same. The acceptability of the Local Commissioner's report is to be finally decided by the Court concerned at the time of arguments keeping in view in the report and the objections, if any, filed by the parties. It is trite that no rights are determined merely with the

appointment of a Local Commissioner and submission of his report. The report is only for ascertaining the factual aspect of the matter and it is entirely in the domain of the Court to decide whether to accept the said report or not. Therefore, the arguments of the counsel for the defendant-petitioner stand rejected. There can be no quarrel with the law laid down in the judgments relied upon by the counsel for the defendant-petitioner however, they do not come to the aid of the defendant-petitioner. The Local commissioner can only ascertain things as they exist on the site as per the averments made in the plaint and the written statement. Whether there is an encroachment or not would be the exclusive domain of the Court. Needless to say that any party aggrieved by the report of the Local commissioner would always be at liberty to file their objections which would be dealt with in accordance with law.

7. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.07.2025

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*