



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

135

CR-3792-2025 (O&M)
Date of decision: 06.11.2025

M/s Engineers Mech (India) Pvt. Ltd. and another ...Petitioners

V/s

Mrs. Usha Gupta and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate, for the petitioners.
Mr. Chetan Mittal, Senior Advocate with
Mr. Avichal Sharma, Advocate, for the respondents.

VIKRAM AGGARWAL, J (ORAL)

The instant revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 21.05.2025 (Annexure P-7) passed by the Court of Additional District Judge, Gurugram, vide which application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short "CPC") by the respondent-plaintiff (Usha Gupta) was allowed.

2. The facts, as emanating from the revision petition, are that a civil suit (Annexure P-1) was instituted by the respondent-plaintiff (Smt. Usha Gupta) for declaration, permanent and mandatory injunction against the petitioners-defendants (M/s Engineers Mech (India) Pvt. Ltd. and others). The case set up was that the respondent-plaintiff was owner in possession of land (fully described in the plaint) measuring 7 kanals 8 marlas (1/3rd share of land measuring 22 kanals 3 marlas), situated within the revenue estate of Village Harsaru, District Gurugram (hereinafter referred to as the "suit land") purchased by the respondent-plaintiff vide registered sale deed dated 02.05.2007 (Annexure P-2).



2.1 Upon an application having been moved by the respondent-plaintiff, the land was demarcated by the competent authority and it was found that the petitioners-defendants had encroached upon land measuring 3 kanals 2 marlas owned by the respondent-plaintiff and had erected a wall on the said land.

2.2 Upon demarcation having been carried out, the respondent-plaintiff requested the petitioners-defendants to remove the encroachment but they kept lingering on the matter on one pretext or the other. Eventually, legal notice dated 13.10.2018 was issued, which also did not yield any result except for a formal reply denying the factum of encroachment.

2.3. Under the circumstances, the suit was filed seeking a declaration as regards ownership and mandatory injunction to the petitioners-defendants to remove the encroachment. Consequential relief of permanent injunction was also sought.

2.4 The suit was opposed by the petitioners-defendants and the factum of encroachment was denied. It was averred that the demarcation report was not a legal and valid report. Vide judgment and decree dated 30.11.2023 (Annexure P-4) passed by the Court of Civil Judge (Jr. Divn.), Gurugram, the suit was dismissed.

2.5 It was held that the alleged encroachment, if any, was existing even prior to the purchase of the land by the respondent-plaintiff and, therefore, it would be the predecessor/vendor of the plaintiff, who would have a cause of action, if any, to file a suit for possession. It was also held that the only remedy that the respondent-plaintiff had was to sue her vendor for refund of the sale consideration or for damages. It was held that the demarcation had not been conducted in accordance with instructions issued by the Financial Commissioner. It was further held that the respondent-plaintiff could have



moved an application during the pendency of the suit to appoint Local Commissioner for the purpose of demarcation.

2.6 Aggrieved by the aforesaid decision, an appeal was preferred by the respondent-plaintiff. During the pendency of the appeal, an application under Order 41 Rule 27 CPC (Annexure P-5) was moved by the respondent-plaintiff seeking appointment of a Local Commissioner for the purpose of demarcation of the suit land.

2.7 The said application was opposed by way of a reply (Annexure P-6). By way of the impugned order dated 21.05.2025, the said application was allowed, leading to filing of the present revision petition.

3. I have heard learned counsel for the parties.

4. Learned Senior Counsel representing the petitioners has strenuously urged that the impugned order is not sustainable. It has been submitted that once the suit had been dismissed by holding that the demarcation report was not of any help to the respondent-plaintiff as demarcation had not been conducted in accordance with the procedure, no application could have been moved before the first appellate Court for the purpose of demarcation as the same would amount to filling up the lacuna. Learned Senior Counsel has submitted that the respondent-plaintiff may agitate before the first appellate Court that the view taken by the trial Court is not sustainable and that the demarcation had been conducted in accordance with law. Learned Senior Counsel has submitted that if applications are allowed in such a manner, there would be no end to the same and repeated applications for the same purpose would be moved.

4.1 Learned Senior Counsel has further submitted that it is not for the Court to collect evidence on behalf of the plaintiff and it is for the plaintiff to produce evidence in support of her case.



4.2 Learned Senior Counsel has further submitted that nowhere in the plaint was it averred that the petitioners-defendants had encroached upon the land of the respondent-plaintiff nor had it been averred that there was some dispossession from the suit land. It has been submitted that under the circumstances, a suit for declaration along with mandatory injunction was not even maintainable.

4.3 Learned Senior Counsel has further submitted that the parameters for allowing an application for additional evidence are totally different and that the first appellate Court erred in allowing the said application in the present case, especially, keeping in view the peculiar facts and circumstances. Learned Senior Counsel has also submitted that the respondent-plaintiff purchased an undivided share of a joint land and the only remedy, therefore, would be to seek partition and not a suit for declaration and injunction.

4.4 Learned Senior Counsel also submitted that the only remedy with the respondent-plaintiff was to initiate action, if so advised, against her vendors and not against the petitioners-defendants. In support of his contentions, learned Senior Counsel has placed reliance upon the judgments of Hon'ble Supreme Court of India in the case of ***Satish Kumar Gupta etc. vs. State of Haryana & others, 2017 (2) RCR (Civil) 74, State of Gujarat and another vs. Mahendra Kumar Parshottambhai Desai (D) by LRs, 2006 (4) JT 600*** and this Court in ***Angrej Singh and others vs. State of Haryana and another, 2023 (1) RCR (Civil) 302*** and ***Jagmohan Vs. Ramesh Kumar @ Ramesh Chander and another, 2014 (1) PLR 472.***

5. *Per contra*, learned counsel representing the respondents-plaintiff submits that there is no illegality in the impugned order. It has been submitted that once the trial Court had found that the demarcation had not been conducted in accordance with the procedure, it should suo moto have



appointed a revenue expert for demarcating the suit property as the dispute is not with regard to the ownership but only with regard to boundaries. Learned counsel submits that once that is so, the best option is to get the land demarcated. Learned counsel submits that allowing of the application is just and legal and demarcation of the suit land is essential for the just decision of the case.

5.1 Learned counsel has submitted that even in the evidence, certain facts have come which necessitated the demarcation of the land. It has been argued that the report of the Local Commissioner will prove to be effective and will not cause prejudice to any side. In support of his contentions, he places reliance upon the judgments in the cases of ***Judhya Devi (since deceased) and another vs. Naresh Kumar (FAO-32-2022, decided on 16.06.2025) 2025 NCHHC 18169, Shreepat Vs. Rajendra Prasad & Others (Civil Appeal No.11634-1995, decided on 02.03.2000), Ram Lal and others Vs. Salig Ram & others, 2019 SCC Online SC 121, M/s Monga Picnic Resort and others Vs. Jashandeep Singh, 2024 NCPHHC 99160 and Paramjit Sidhu Vs. Inderpreet Singh and others, 2024 (1) RCR (Civil) 80.***

6. I have considered the submissions made by learned counsel for the parties.

7. The only dispute is as regards boundaries. The respondent-plaintiff claims that the petitioners-defendants have encroached upon the land measuring 2 kanals 3 marlas owned by the respondent-plaintiff. The petitioners-defendants, however, deny the said fact. Demarcation had been got conducted by the respondent-plaintiff as per which, there is encroachment. However, the said report was discarded by the trial Court on the ground that the said demarcation had not been conducted as per the procedure laid down for the said purpose. Apart from the said fact, on merits also, it was noticed



that the suit of the respondent-plaintiff was devoid of merit. Once the trial Court had come to the conclusion that the demarcation had not been conducted in accordance with the established procedure, it could have and in fact it should have itself appointed a Local Commissioner for getting the land demarcated. There have been instances, where such boundary disputes have reached this Court and the Hon'ble Supreme Court of India. After which demarcation was ordered. In any case, demarcation would not cause prejudice to any other side. In fact, it would assist the Court in arriving at a correct decision. Deciding the issue of encroachment only on the basis of oral evidence would never be a good idea.

7.2. In the considered opinion of this Court, the first appellate Court took a very pragmatic view. It has to be borne in mind that where some evidence is required for the just decision of the case, Courts should not hesitate to permit the production of such evidence at any stage. In the considered opinion of this Court, demarcation is essential for the just decision of the case and it will assist the first appellate Court in arriving at a just and fair conclusion.

7.3 The allowing of the application for additional evidence would not amount to filling up the lacuna in the case nor would it amount to the Court collecting evidence on behalf of the plaintiff. In fact, the trial Court itself should have ordered demarcation once the dispute was only with regard to boundaries. However, the same was not done but the said error has been corrected by the first appellate Court by allowing the application for additional evidence.

8. I have gone through the judgments relied upon by both sides. In so far as the judgments relied upon by the learned Senior Counsel for the petitioners-defendants in the case of *Satish Kumar Gupta, State of Gujarat*



and **Angrej Singh and others** (*supra*) pertaining to the issue of filling up the lacuna, are concerned, there is no quarrel with the said proposition that no evidence should be permitted to be led which may amount to filling up the lacuna. However, as observed, the demarcation report would assist the Court in arriving at a just decision and, therefore, it cannot be said to be permitting filling up a lacuna. In the case of **Jagmohan Singh** (*supra*), a coordinate Bench held that Courts are not to collect evidence on behalf of the plaintiff. Again there is no quarrel with the said proposition but as observed, the demarcation would be essential for the just decision of the case.

9. The Hon'ble Supreme Court of India clearly held in the case of **Shreepat** (*supra*) that where the dispute was with regard to the area and boundaries of a land in question, the identity should have been got established by issuing a Survey Commission to locate the plot in dispute and in the case of **Ram Lal** (*supra*) also, the Hon'ble Supreme Court of India was seized of a similar issue. In that case, the plaintiffs had alleged encroachment over the land in dispute by the defendants. The trial Court dismissed the suit. However, the first appellate Court remitted the matter to the trial Court after framing additional issues to the effect as to whether the defendants had encroached over the land in question and to what extent. The trial Court was also directed to appoint a Local Commissioner and to decide the matter after inviting objections on the report of the Commissioner. After the report of the Commissioner, the defendants raised objections, which were rejected and thereafter, the trial Court returned its findings on the additional issue(s) in favour of the plaintiffs. The appellate Court, however, allowed the appeal and decreed the suit. In second appeal, the High Court found that the Local Commissioner had not carried out demarcation in accordance with the applicable instructions and while ruling that such report could not be relied



upon and while further holding that there was no other evidence to the effect that the defendants had encroached over the land of the plaintiffs, proceeded to allow the appeal. The matter then reached the Hon'ble Supreme Court of India. The question which was to be determined by the Hon'ble Supreme Court of India was as to whether the High Court was justified in setting aside the decree of the first appellate Court on the ground that the Local Commissioner had not carried out demarcation in accordance with the applicable instructions. After examining the entire issue, the Hon'ble Supreme Court of India held that if the report of the Local Commissioner was suffering from an irregularity i.e. for want of following the applicable instructions, the proper course for the High Court was either to issue a fresh Commission or to remand the matter for reconsideration but the entire suit could not have been dismissed for any irregularity on the part of the Local Commissioner. The Hon'ble Supreme Court of India held that if the Local Commissioner's report was found wanting in compliance of applicable instructions for the purposes of demarcation, it was only a matter of irregularity and could have only resulted in discarding of such report and requiring a fresh report and any such flaw by itself, could have neither resulted in nullifying the order requiring appointment of a Local Commissioner and for recording a finding after taking the report nor in dismissal of the suit. The Hon'ble Supreme Court of India, therefore, held that the proper course was issuing a fresh Commission and for directing the trial Court to decide the entire suit afresh on the issues as originally framed, as also additional issues after taking the report of the Local Commissioner afresh and after affording an opportunity to the parties to submit their objections, if any. The relevant extract from the said judgment reads as under:-



“17. The fact that the Local Commissioner's report, and for that matter a properly drawn up report, is requisite in the present case for the purpose of elucidating the matter in dispute is not of any debate, for the order dated 24.01.1991 passed by the First Appellate Court having attained finality whereby, additional issues were remitted for finding on the basis of Local Commissioner's report. In the given set of facts and circumstances, we are clearly of the view that we are clearly of the view that if the report of the Local Commissioner was suffering from an irregularity i.e., want of following the applicable instructions, the proper course for the High Court was either to issue a fresh commission or to remand the matter for reconsideration but the entire suit could not have been dismissed for any irregularity on the part of Local Commissioner. To put it differently, we are clearly of the view that if the Local Commissioner's report was found wanting in compliance of applicable instructions for the purpose of demarcation, it was only a matter of irregularity and could have only resulted in discarding of such a report and requiring a fresh report but any such flaw, by itself, could have neither resulted in nullifying the order requiring appointment of Local Commissioner and for recording a finding after taking his report nor in dismissal of the suit. Hence, we are unable to approve the approach of High Court, where after rejecting the Commissioner's report, the High Court straightway proceeded to dismiss the suit. The plaintiffs have been asserting encroachment by the defendants on their land and have also adduced oral and documentary evidence in that regard. As noticed, the First Appellate Court had allowed the appeal and decreed the suit filed by the plaintiff not only with reference to the Commissioner's report but also with reference to the other evidence of the parties. Unfortunately, the High Court appears to have overlooked the other evidence on record.

18. In the totality of circumstances, in our view, for just and effectual determination of all the questions involved in the matter, the proper course is of issuing a fresh Commission and for direction to the Trial Court to



decide the entire suit afresh on the issues as originally framed as also on the additional issues after taking the report of the Local Commissioner afresh and affording an opportunity to the parties to submit their objections, if any.”

10. Similar views were taken by Coordinate Benches in the cases of **M/s Monga Picnic Resort** (supra) and **Paramjit Sidhu** (supra). Not only this, in the High Court Rules and Orders Volume 1, Chapter I Part-M, the procedure in Hadd Shikni cases, has been laid down. The said Rules lay down that in Hadd Shikni suits and other suits of boundaries disputes of land falling within the jurisdiction of a Civil Court, it is generally desirable that an inquiry be conducted on the spot, which can usually be done by suggesting that one party or the other should apply to the Revenue Officer to fix the limits or by appointing a Local Commissioner or by the Court itself by making a local inquiry. The relevant extract from the High Court Rules and Orders, reads as under:-

“Volume 1 Chapter 1 Part-M

(i) Local inquiry:- In “Hadd –Shikni” suits and other suits of boundary disputes of land falling within the jurisdiction of a Civil Court, it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways:-

- (a) by suggesting that one party or the other should apply to the Revenue Officer to fix the limits, under section 101.**
- (b) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order XVII, Rule 3 of the Code of Civil Procedure;**
- (c) by appointing a local Commissioner, and (c) by the Court itself making a local inquiry.”**

11. The present case also, in a way, is a Hadd Shikni case, for, the only dispute is as regards boundaries. Under the circumstances, the report of



the Local Commissioner would help the Courts to arrive and adjudicate upon the issue and would not cause any prejudice to either side.

12. Another fact which emerges from the record is that an application for the appointment of a Local Commissioner had also been moved by the respondent-plaintiff along with the appeal and notice in the same had also been issued, but before the application could be decided, an application under Order 41 Rule 27 CPC was moved. It is, therefore, clear that the respondent-plaintiff was agitating the point of demarcation from the very beginning before the first appellate Court. The impugned order is well reasoned and in view of the discussion in the preceding paragraphs and keeping in view the facts and circumstances of the case, does not call for any interference.

13. As regards the argument that the only course was to institute a suit for partition, the same is devoid of merit as neither in the plaint nor in the written statement, it is the case of the parties that they are co-sharers.

14. Upon analysis of the aforesaid facts and circumstances, the present revision is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

November 06, 2025
vcgarg

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No