



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

265/1

CR-6233-2023 (O&M)

Date of decision : 20.08.2025

Sanjay Khurana

..... Petitioner

versus

Shanta Yadav and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ashok Singla, Advocate and
Mr. Ankush Singla, Advocate
for the petitioner.

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Aman Gautam, Advocate
for respondent No.1/caveator.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is direction against order dated 13.09.2023, whereby application filed by defendant No.7 seeking appointment of Local Commissioner to demarcate the suit land stands rejected.

2. Mr. Singla has drawn attention of this Court to the site plan in support of his contention. He submits that the allegation in the plaint is regarding defendant having encroached upon pink area measuring 75.6 ft x 21 ft on one side and 2 ft 6” on the other. He submits that the same draftsman prepared the site plan Ex.D-13 relied upon by the defendant which shows that the construction raised by the defendant is within the boundaries of property owned by him. It has been contended that the positive stand of the petitioner-defendant before the Trial Court is that he is not in possession of any property owned by plaintiff and has



raised construction within the four corners of his plot.

3. Trial Court erred in dismissing the application filed by the petitioner. Further reliance is being placed upon Section 75 CPC to submit that the Court is within its right to conduct local inquiry. In order to hammer forth his contention, he relies upon judgments of Supreme Courts, i.e. ***Surya Dev Rai vs. Ram Chander Rai and others* 2003(6) SCC 675, *Haryana Waqf Board vs. Shanti Sarup & Ors.* 2008(8) SCC 671, *Shreepat vs. Rajendra Prasad & Ors.* 2000(4) ALR 534.**

4. *Per contra*, Mr. Yadav appearing for the respondent-plaintiff relies upon ratio of law laid down by Division Bench of this Court in ***Harvinder Kaur and another v. Godha Ram and another*** reported as ***1979 PLJ 562*** reiterated in subsequent judgment passed by another Division Bench titled as '***Pritam Singh and another vs. Sunder Lal and others* 1990(2) PLR 191'** to contend that since order refusing appointment of Local Commissioner does not decide any issue nor adjudicates right of the parties for the purpose of suit, the same is not revisable. He submits that the same view has been further followed in ***Santok Singh and others vs. Majinder Singh and others* 2020(4) RCR (Civil) 155 and *Bhinder Singh and another vs. Raj Pal Singh* 2021(4) PLR 711.**

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

6. So far as reliance upon Section 75 CPC is concerned, power of the Court to conduct local inquiry is not in dispute. The issue however is:



(i) Whether the revision is maintainable against order declining the application filed by a party for appointment of Local Commissioner.

7. The test laid down by Division Bench of this Court in ***Godha Ram's case (supra)*** is that the revision would be maintainable, in case such application decides any issue or adjudicates rights of the parties for the purpose of suit.

8. Applying the test laid down in ***Godha Ram's case (supra)*** to the present case, this Court finds that the defendant-petitioner sought appointment of Local Commissioner to get his property demarcated. In a civil *lis*, the parties are required to plead and prove their respective stand. In order to prove one's stand, party is are required to lead cogent evidence. The defendant having taken defence that the construction raised by him is within the four corners of the plot owned by him, is required to prove the same by leading cogent evidence. By way of present application, he cannot be allowed to ask the Court to marshal evidence for him. Trial Court having declined the application filed by petitioner has neither decided any issue nor any right.

9. In view thereof, this Court finds that the present matter being fully covered by ratio of law laid down by Division Bench in ***Godha Ram's case (supra)***, subsequently reiterated in ***Pritam Singh's case (supra)***, there is no merit in the present revision petition. The same deserves to be dismissed.

10. Mr. Singla has further raised issue that the said judgments were passed interpreting Section 115 of CPC, 1908 and not Article 227 of the Constitution of India.



11. Revisional jurisdiction of this Court under Article 227 of the Constitution of India has been interpreted by Supreme Court in the case of **M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd., (2001) 8 SCC 97** wherein Supreme Court dealt with the scope of Article 227 of Constitution of India observing as under:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to.

7. This Court in **Ahmedabad Mfg. & Calico Ptg. Co. Ltd vs. Ramtahel Ramanand and Ors. [AIR 1972 SC 1598]** in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the



purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case **Waryam Singh & Anr. vs. Amarnath & Anr. [1954 SCR 565]**. This court in **Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and Anr. [AIR 1975 SC 1297]** has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

12. Aforesaid dictum has been reiterated by Apex Court in the case of **M/s Garment Craft vs. Prakash Chand Goel, (2022)4 SCC 181** observing as under:

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [1*] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is



exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in ***Estralla Rubber v. Dass Estate (P) Ltd. (2001) 8 SCC 97*** has observed:-

[1 Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 217]*

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no



evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

13. ***M/s Garment Craft's case*** (supra) was further relied upon in the case of **Ibrat Faizan vs. Omaxe Buildhome Private Limited, 2022 AIR Supreme Court 2363** observing as under :

"14. xxxx 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 rigour of the powers to be exercised under Article 227 of the Constitution of India."



14. Same is the ratio of law laid down in the case of **M/s Puri Investments vs. M/s Young Friends and Co. and others, 2022 (1) RCR (Rent) 311** wherein Apex Court held as under:

“13. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum’s decision was perverse and the manner in which such finding was arrived at was itself perverse.”

15. In view of above, this Court does not find that the case of the petitioner calls for any interference exercising revisional jurisdiction under Article 227 as claimed by Mr. Singla.

16. Finding no merits in the present revision, the same is ordered to be dismissed.

17. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

20.08.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No