

2025.PHHC.166462

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

CR-6053-2024

Date of Decision: 27.11.2025

MAMTA JOSHI

...Petitioner

Versus

GURMAIL SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL**Present:-** Mr. Aditya Dassaur, Advocate
for the petitioner.Mr. Rajiv Joshi, Advocate
for respondent No.1.**VIKRAM AGGARWAL, J.(Oral)**

1. The instant petition, preferred under Article 227 of the Constitution of India, assails order dated 10.09.2024 (Annexure P-6) passed by the Court of Civil Judge (Jr. Div.), Phillaur, vide which the application filed by the petitioner for appointment of a Local Commissioner was dismissed.

2. The petitioner/plaintiff instituted a suit (Annexure P-1) for possession of land (fully described in the plaint) comprised in Khasra No.423, measuring 10 Marlas situated at Village Khakhian, Tehsil Phillaur, District Jalandhar (hereinafter referred to as 'the suit land'). Consequential relief of permanent injunction restraining the respondent/defendant from changing the nature of the suit property, raising construction over it and delivering possession thereof to anyone else, was also sought.

3. The petitioner/plaintiff claimed to be the owner in possession of the suit property. It was averred that the respondent/defendant had taken forcible possession of the suit land about one year prior to the filing of the suit. Despite repeated requests, the same was not vacated, as a result of which, the suit was instituted. The suit was opposed by the respondent/defendant. In the written statement (Annexure P-2), a stand was taken that the respondent/defendant was co-owner in possession of one property (described in the written statement) and that the said property did not bear Khasra No.423. It was averred that in the guise of the suit, the plaintiffs were bent upon taking possession of the land of the respondent/defendant. Other averments were denied apart from raising certain preliminary objections.

4. An application (Annexure P-4) was moved by the petitioner/plaintiff for appointment of a Revenue Official as Local Commissioner seeking demarcation of Khasra No.423. The said application was opposed by way of reply (Annexure P-5). It was averred that a Local Commissioner could not be appointed for collecting evidence on behalf of the plaintiff. It was also averred that the boundaries of suit property had nowhere been mentioned nor any site plan had been tendered. Dismissal of the application was prayed for.

5. By way of the impugned order dated 10.09.2024, the said application was dismissed leading to the filing of the instant revision petition.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner strenuously urges that the impugned order is not sustainable. He submits that the only dispute is as regards encroachment of the suit property by respondent/defendant and, under the circumstances, the appointment of a Local Commissioner would be essential for the just decision of the case. It is submitted that normally under such circumstances, the request for appointment of a Local Commissioner is not declined. As regards maintainability of a revision petition against an order dismissing an application for the appointment of a Local Commissioner, learned counsel submits that the revision petition is maintainable. In support of his contentions learned counsel has placed reliance upon **M/s Allwin Infrastructure Limited, Panchkula v. M/s Maxxus Developers and Ors.**, 2021(1) RCR(civil) 177; **Shamsher Singh Bajwa v. Gurdial Singh**, 2023(2) RCR(Rent)490; **Paramjit Sidhu v. Inderpreet Singh & Ors**, 2024(1) RCR(civil) 80 and **Balwant Singh & Anr. v. Ankit & Ors.**, 2024(2) RCR (civil) 174.

8. Per contra, learned counsel for the respondents submits that there is no illegality in the impugned order. He submits that it is not for the Court to collect evidence on behalf of the plaintiff and it is for the plaintiff to prove his case by leading cogent evidence. Learned counsel submits that the application was filed at the end of the trial just to fill-up the lacuna in the case. It is argued that if, at any stage, the Court deems it appropriate, it can always appoint a Local Commissioner. Lastly, it is submitted that a revision petition against an order dismissing an application for the appointment of a Local

Commissioner is not maintainable. In support of his contention, learned counsel has placed reliance upon a Division Bench judgment of this Court in the case of **Pritam Singh & Anr. v. Sunder Lal & Ors.**, 1990 (2) PLR 191.

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

10. The suit was instituted praying for the following substantive relief:-

“Suit for possession an owner of the property bearing Khewat no.189/188, Khatauni no.288, Khasra no.42(0-10), situated in the area of village Kotli Khakhian, Tehsil Phillaur, District Jalandhar, according to fard Jamabandi for the year 2014-2014 with all rights apparturent thereto.

Along with consequential relief of permanent injunction restraining the defendant, their associates, agents, servants etc. from changing the nature of the property in question thereby raising any type of construction over the it and further restraining the defendant from delivering the possession of the property in question to any one, except the plaintiff, illegality forcibly or through any other way, forever.”

11. It was averred in the suit that the respondent/defendant had taken over forcible possession of the suit property about one year prior to the institution of the suit. However, no other details were given. Be that as it may, it goes without saying that the onus to prove

the aforesaid assertion would be on the plaintiffs. Merely because there was a denial on behalf of the defendant and it was stated that the property of which he is in possession is not the suit property would not mean that a Local Commissioner would have to be appointed. Still further, the plaintiffs are required to prove their case by leading cogent evidence and the Court does not have to collect evidence for the plaintiffs. In any case, if the Court so requires, it can appoint a Local Commissioner at any stage of the suit.

12. As regards, the maintainability of a revision petition against an order dismissing an application for the appointment of a Local Commissioner, the judgment in the case of **Pritam Singh's** (supra), clearly lays down that a revision petition against such an order is not maintainable. The judgment in the case of **Harvinder Kaur and Anr. v. Godha Ram and Anr.**, 1979 AIR Punjab and Haryana 76, was also considered by the Division Bench wherein also, it has been held that no revision petition would lie against an order passed under Order 26 Rule 9 CPC. Though in the final paragraph it was held that the same cannot be held as a general rule, the Division Bench held that no reconsideration was required as regards the law laid down in the case of **Harvinder Kaur** (supra). It was also held that appointment of a Local Commissioner was the discretion of the Court and if the Court refuses to appoint a Local Commissioner, no right of any party can be said to have been prejudiced.

13. I have gone through the other judgments relied upon by the learned counsel for the petitioner. The same had been rendered in

the particular facts of those cases and do not lay down any general rule.

14. That being so, the impugned order does not suffer from any illegality. Accordingly, the revision petition is going to be devoid of any and the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

27.11.2025

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