



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

(118)

CR-7946-2025(O&M)
Reserved on 09.12.2025
Pronounced on: 15.12.2025
Uploaded on: 15.12.2025

Kashmiri Lal (since deceased) through LR's and another ... Petitioners

versus

Municipal Corporation, Hoshiarpur and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Parminder Singh Kanwar, Advocate,
for the petitioners

Mr. Balram Singh, Advocate,
for respondent No. 1

Mr. I.S. Kingra, Sr. DAG, Punjab,
for Respondents No. 2 and 3

VIRINDER AGGARWAL, J.

1. The present revision petition under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 01.08.2025 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Hoshiarpur vide which the application moved by the petitioner for appointment of a Local Commissioner i.e., revenue expert for effecting demarcation of the suit land was dismissed. Further, it is prayed that proceedings before the learned Trial Court be stayed during the pendency of the present revision petition.

**BACKGROUND FACTS**

2. That the brief facts are that petitioners had filed a suit for mandatory injunction directing the respondents to hand over the vacant possession of the joint land measuring 15 marlas shown Red in colour and marked as ABCD part of the total land measuring 20 kanals 12 marlas comprised in khewat no.326/323, khatauni no.339, khasra no.36//10 (6-13), khewat 1953/1886 khatauni no.2113, khasra no.3//1/2 (6-9) and 2/2 (3-12) and khewat no.2458/2362, khatouni no.2664, khasra no.36//9 (3-8), situated in the revenue estate of Village PurHirran, Hudbust No.251 Tehsil Hoshiarpur as per Jamabandi for the year 2017-18 with consequential relief of permanent injunction restraining the defendants from interfering in the joint possession of the plaintiffs over the land in question and from further dispossessing the plaintiffs forcibly from the land in question in any manner, in short. The case set up by the petitioners was that they are owner-in-possession of the joint land mentioned in the head note of the plaint. Respondents have encroached upon part of the suit property and have built a metal road over the same without there being any proceeding by the Respondents to acquire the suit property. Respondents have no right,title, or interest over the suit property and therefore, they have no right to construct a metal road in the suit property.

3. That the Respondent No. 2 and 3 filed a joint written statement denying the claim of the petitioners wherein it was specifically pleaded that the Respondents No. 2 and 3 had constructed a link road i.e., Hoshiarpur Phagwara By pass road (Hawkins pressure Cooker Factory) to Gurudwara Jahraur Jahur (Hoshiarpur Chandigarh By pass) after getting a grant under the scheme MP Local Area Development Scheme. The aforesaid Scheme was duly approved by the Deputy Commissioner, who had given his approval vide letter dated



04.05.2018 to Executive Engineer, Provincial Division, PWD (B&R), Hoshiarpur to construct the aforesaid road for the welfare of public at large. Before construction of the link road there was a Kachha Rasta of Municipal Corporation which is part of Khasra No. 142. The aforesaid road has been constructed for greater public use and welfare of general public which has been constructed over the existing Kachha Road and no encroachment whatsoever has been done by the respondents.

4. Subsequently, the plaintiffs-petitioners filed an application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking appointment of a Local Commissioner for effecting demarcation. The said application was contested by the defendant-respondents inter alias pleading that the plaintiffs-petitioners had filed the application just to delay the proceedings. It was further pleaded that the application is not maintainable and that the Local Commissioner cannot be appointed to collect the evidence for any of the parties. Thereafter, the learned trial court has dismissed the application of the plaintiffs-petitioners.

5. The learned Trial Court, while dismissing the application observed that the onus is upon the applicants/plaintiffs to prove the fact of encroachment and, firstly, to prove the fact that the road, if any, is constructed on the land as detailed in the headnote of the plaint. Plaintiffs have to put forth their own evidence, and no Local Commissioner can be appointed to collect evidence.

CONTENTIONS

6. The Learned counsel for the petitioners argued that learned Court below erred in not appreciating the fact that the construction of the road has been not denied by the respondents in their written statement. The only defence pleaded



is that the road has not been constructed in the suit land. Further, he argued that when identity of the suit property is disputed between the parties, the best piece of evidence is demarcation. He places his submission on the judgment of Hon'ble Supreme Court in *Surya Dev Rai v. Ram Chander Rai and others, (2003) 6 Supreme Court Cases 675*, wherein the supervisory powers of the Hon'ble High Court under Article 227 are discussed in detail. He argued that the supervisory jurisdiction is wide and can be used to meet the ends of justice, and also to interfere even with the interlocutory order. Further, the learned counsel for the petitioners submits that the Hon'ble High Court may feel inclined to intervene where the error is such as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice, or where such refusal itself would result in the prolonging of the lis. Therefore, the present revision petition is maintainable to be adjudicated by this court under Article 227 of Constitution of India. Thus, the learned counsel prayed for setting aside the impugned order dated 01.08.2025 whereby the application for appointment of Local commissioner was wrongly dismissed by the learned trial court.

7. The learned counsel for the respondents submits that the petitioners had filed the application just to delay the proceedings. It was further argued that the application is not maintainable and that the Local Commissioner cannot be appointed to collect the evidence for any of the parties.

OBSERVATION AND FINDINGS

8. Heard the counsel for the parties and perused the material available on record as well as relevant judgment.



9. At the outset, it is apposite to discuss about the judgment by Hon'ble Supreme Court in ***Surya Dev Rai v. Ram Chander Rai and others, (2003) 6 Supreme Court Cases 675***, wherein it was observed that the High Court is vested with the full powers under Article 227 of the Constitution of India to supervise any interim orders passed by the Courts below. The relevant portion from this judgement is reproduced as under:

“32. The principles deducible, well-settled as they are, have been well summed up and stated by a two-judge Bench of this Court recently in State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and Ors., 2003(2) RCR (Criminal) 860: 2004(1) Apex Criminal 161: JT 2003(4) SC 605, para 28. This Court held:

(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature;

(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order,

(iii) the power must be exercised sparingly, only to move subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of the Civil Procedure Code cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been



excluded by the Civil Procedure Code Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) *****

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step to exercise its supervisory jurisdiction.

....(emphasis added)”

10. However, the Hon’ble Supreme Court in the case of ***Radhey Shyam and anothers versus Chhabi Nath and Others (2015) 5 Supreme Court Cases 423***, specifically addressed with the question that whether the view previously taken in ***Surya Devi Rai (Supra)*** that a writ lies under Article 226 of the constitution against the order of the civil court. The Apex Court held that judicial orders of a Civil Courts are not amenable to a Writ of Certiorari under Article 226 **and Scope of article 227 is different from Article 226**. Accordingly, the contrary opinion expressed in the ***Surya Dev Rai(Supra)*** case was expressly overruled, but this overruling was strictly confined to **Article 226** and did not impact the scope or exercise of supervisory jurisdiction vested in the Hon’ble High Court under **Article 227** of the Constitution. This clarification is pivotal, as the power



of the Hon'ble High Court to intervene under Article 227 to ensure that subordinate courts function within the bounds of their authority remains intact.

11. Further, it becomes important to reproduce the relevant provision of law **Order 26, Rule 9** of the CPC which reads as follows:-

"9. Commissions to make local investigations:- *In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court."*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Hence, in any suit, if the Court believes that a local investigation is required or proper for the purpose of explaining or clarifying any matter in dispute, it may issue a commission to conduct such investigation. The purpose is fact-finding when the court cannot properly understand the dispute, especially in matters involving land, boundaries, structures, conditions, physical features etc.

12. However, there can be no quarrel with the settled proposition of law that no party can be permitted to seek assistance of the Court to collect favourable evidence. Be that as it may, in a case where a party being owner of land and alleging encroachment in the suit property, an application for demarcation of



the land of the plaintiff as well as the defendants would certainly facilitate an effective and complete adjudication of the matter.

13. Moreover, it may also be noticed here that though there are judgments of this Court stating to the effect that in a revision filed even under Article 227 of the Constitution of India, this Court would not interfere with an order passed by the learned Trial Court, either appointing or refusing to appoint a Local Commissioner. In this regard, a judgment of the Hon'ble Supreme Court in **Haryana Waqf Board v. Shanti Sarup and others (2008) 8 SCC 671**, can be cited, wherein their Lordships held as follows:-

*"4. Admittedly, in this case, an application was filed under Order 26, Rule 9 of the Civil Procedure code, which was rejected by the Trial Court, but in view of the **fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26, Rule 9 CPC***

5. The appellate court found that the Trial Court did not take into consideration the pleadings of the parties when there was no specific denial on the part of the respondents regarding the allegations of unauthorised possession in respect of the suit land by them as per Para 3 of the plaint. But the only controversy between the parties was regarding demarcation of the suit land because the land of the respondents was adjacent to the suit land and the application for demarcation filed before the Trial Court was wrongly rejected.

*6. It is also not in dispute that even before the appellate court, the appellant-Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land. In our view, this aspect of the matter was not at all gone into by the High Court while dismissing the second appeal summarily. **The High Court ought to have considered whether in view of the nature of dispute and in the***



facts of the present case, whether the Local Commissioner should be appointed for the purpose of demarcation in respect of the suit land.

7. For the reasons aforesaid, we are of the view that the High Court ought to have considered this aspect of the matter and then decided the second appeal on merits. Accordingly, we set aside the judgment and decree passed in the second appeal and the second appeal is restored to its original file.

..... (Emphasis applied)”

Therefore, if there is no option left but to appoint a Local Commissioner to determine the correctness or otherwise of the contentions of the respective parties to the lis, such a Local Commissioner would be appointed by a Court.

14. In view of the above discussion, and considering the facts and nature of controversy in the present case, demarcation can only establish whether any encroachment is made by the respondents or not. In the absence of such demarcation, the matter cannot be resolved effectively in any other manner. In these circumstances, the indulgence of this Court is required under its supervisory power under Article 227, as the learned Civil Judge has failed to exercise the jurisdiction vested in it.

15. Recently, this court in the case of **Malak Singh versus Joga Singh (CR-8930-2025, decided on 08.12.2025)**, has refused to grant the requested relief in the civil revision petition. This was because the facts of the that case were distinguishable from the facts of the case presently before this court, and judgments of Hon’ble Supreme Court were not brought to the notice of this court. Thus, this court has based its decision on the findings recorded by coordinate benches of this court and also based upon the judgment of Division



Bench which was on the basis of petition filed under Section 115 of CPC and not under article 227 of Constitution of India.

16. Resultantly, the impugned Order dated 01.08.2025 passed by Additional Civil Judge, Senior Division, Hoshiarpur is **set aside** and the application filed by the plaintiffs-petitioners for the appointment of a Local Commissioner is allowed. The Field Kanungo is hereby appointed as the Local Commissioner to demarcate the land measuring 15 marlas shown in red colour and marked as ABCD and to report as to if same form part of Total land measuring 20 kanals 12 marlas owned by petitioners consisting in khewat no.326/323, khatauni no.339, khasra no.36//10 (6-13), khewat 1953/1886 khatauni no.2113, khasra no.3//1/2 (6-9) and 2/2 (3-12) and khewat no.2458/2362, khatouni no.2664, khasra no.36//9 (3-8), situated in the revenue estate of Village PurHirran, Hudbust No.251 Tehsil Hoshiarpur as per Jamabandi for the year 2017-18 The fee of the Local Commissioner shall be assessed by the learned Civil Judge, payable by the plaintiffs-petitioners. He shall submit his report in accordance with the directions of the learned Civil Judge.

17. Accordingly, the present revision petition filed under Article 227 stands **allowed**.

(VIRINDER AGGARWAL)
JUDGE

15.12.2025

Saurav Pathania

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