



CR-8930-2025(O&M)

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

(139)

CR-8930-2025(O&M)

Date of Decision: 08.12.2025

Malak Singh

...Petitioner

Versus

Joga Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Parminder Singh, Advocate
for the petitioners

VIRINDER AGGARWAL, J.(ORAL)

1. The present revision petition under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner for setting aside the order dated 21.11.2025 (Annexure P-9) passed by the Additional Civil Judge (Junior Division), Assandh has dismissed the application moved by the petitioner under Order XXVI Rule 9 CPC for appointment of a Local Commissioner to ascertain the factual position at the spot with respect to construction alleged to have been raised by the respondent.

2. Brief facts of the case are that the Petitioner and respondent are real brothers and co-sharers. The suit filed by the petitioner-plaintiff is one for permanent injunction alleging that the respondent-defendant, under the garb of reconstructing his old house, is raising fresh construction upon another portion of joint land. The learned trial Court earlier passed an order dated 15.10.2025 restraining fresh construction in Killa No.8 but permitted reconstruction of the existing house in Killa No.13.



3. Thereafter, the plaintiff-petitioner filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking appointment of a Local Commissioner to verify whether the respondent-defendant is in fact reconstructing his existing house or raising new construction over another portion. The said application was contested by the defendant-respondents inter-alia pleading that the plaintiff-petitioner had filed the application just to delay the proceedings and that the plaintiff-petitioner has no locus standi and cause of action to file the application. 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. The learned trial Court dismissed the application on the ground that appointment of a Local Commissioner amounts to collection of evidence.

4. I have heard the matter and perused the file.

5. The principle is well settled by the Division bench of this court in ***Pritam Singh Vs. Sunder Lal , 1990(2) PLR 191*** in this regard by stating that the mere refusal to appoint a Local Commissioner does not affect the rights of the parties and ordinarily does not give rise to a cause for interference in revisional jurisdiction, since Order XXVI Rule 9 is essentially discretionary. The relevant portion of the judgment is as following :

“6. After going through the judgments cited in the reference order, we do not find that the earlier judgment in Harvinder Kaur's case (supra) requires any re-consideration. The order refusing to appoint a Local Commissioner does not decide any issue, nor adjudicates rights of the parties for the purpose of the suit and is, therefore, not revisable. The distinction sought to be made by the learned Single Judge in view of the Judgment in M/s. Sadhu Ram Bali Ram's case (supra) clearly noticed by the Division Bench in Harvinder Kaur's case (supra) and it was observed,



"It may be observed that the facts of M/s Sadhu Ram Bali Ram's case were different as in that case the onus of an issue had been wrongly placed and while deciding that question, it was held that such an order would be revisable."

Apart from that, placing the onus of an issue has something to do with the rights of the parties whereas refusing to appoint a Commission under Order 26 Rule 9, Civil Procedure Code, has nothing to do with the rights of the parties as such. It is the discretion of the Court to appoint a Commission thereunder and if the Court refuses to appoint a Commission, then no right of any party can be said to be prejudiced as such."

Similar view has been taken by this Court in the case of **Harchand v. Karambir Singh, 2022 SCC Online P&H 1777 and Smt. Raksha Devi Vs. Madan Lal & Ors., 2017(3) PLR 249** wherein it has categorically been held that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner. It is trite that an order refusing to appoint a Local Commissioner does not decide any issue nor does it adjudicate any rights of the parties for the purpose of the suit and hence would not be a revisable order

6. Accordingly, the present revision petition stands **dismissed**.
7. However, It is clarified that the dismissal of the present revision petition shall be without prejudice to the rights of the petitioner-plaintiff to move such application at any later stage.

08.12.2025
Saurav Pathania

(VIRINDER AGGARWAL)
JUDGE

- (i) Whether speaking/reasoned : Yes/No
- (ii) Whether reportable : Yes/No