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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 15/2025 & CM APPL. 4161/2025**

BHUPINDER SINGH

.....Petitioner

Through: Mr. Shreyans Singhvi &
Ms. Akanksha Agrawal &
Ms. Tanuja Singh, Advs.

versus

AJIT PAL SINGH BINDRA & ANR.Respondents

Through: Mr. Abhishek Singh, Mr.
J. Amal Anand, Mr. Elvin
Joshy, Ms. Alisha Sharma,
Mr. Shashwat Tyagi &
Mr. K.V. Vibhu Prasad,
Advs. for R-1.
Mr. Abhay Singh, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.01.2025

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CM APPL. 4162/2025 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has challenged the order dated 24.12.2024, passed by the learned Trial Court in Civ DJ 512/2022, pursuant to which the application filed by petitioner/ Defendant No. 1 seeking recall of the order dated 08.11.2024, was dismissed.
4. The learned Trial Court by order dated 08.11.2024 had appointed Local Commissioner for recording of the evidence in suit bearing No. Civ DJ 11469/16 titled as '*Ajit Pal Bindra v. Gurcharan Singh and Anr.*' The suit was filed by Respondent



No. 1, way back in the year 2022, seeking specific performance of agreement dated 22.10.2011.

5. By order dated 08.11.2024, the learned Trial Court recorded that the matter is at the stage of plaintiff's evidence and with the consent of the parties and in the interest of speedy justice, ordered that the entire evidence shall be recorded through a Local Commissioner.

6. An application was thereafter filed by the petitioner/Defendant No. 1, seeking recall of the order stating that no consent was given for the evidence to be recorded before the Local Commissioner.

7. It was contended by the petitioner that another suit has been filed by the respondents seeking specific performance in regard to the same property, against the sister-in-law who is the co-owner of the property in dispute.

8. It was also contended that since the matter relates to the same property and the plaintiff is also same, the evidence may be recorded together in both the suits.

9. The petitioner had also filed an application seeking transfer of both the suits to one Court, in view of the commonality of the facts, which application was allowed and the matter was transferred to one Court.

10. The Local Commissioner is appointed in terms of Order 26 Rule 9 of the Code of Civil Procedure, 1908 ('CPC'), which provides that the Courts can pass an order for the evidence to be recorded through the Local Commissioner either on its own motion or on an application filed by a party. The commissioners are appointed in the interest of justice for expeditious disposal of the cases.



11. The learned Trial Court recorded that even if it is to be assumed that there is some evidence which is common in both the suits, the same cannot be a ground for not permitting the recording of the evidence before the Local Commissioner. It was also noted that connected matters are transferred to one Court for the convenience of the litigants and to avoid conflicting judgments at the final stage. However, that same does not necessarily imply that all matters have to be examined and the evidence has to be recorded together.

12. This Court finds no infirmity in the order passed by the learned Trial Court. The application seems to have been filed by the petitioner only to delay the recording of the evidence.

13. As noted by the learned Trial Court, the purpose of appointment of Local Commissioner is only to expediate the recording of the evidence for the convenience of all litigants.

14. No worthy reason has been mentioned in the application filed by the petitioner before the learned Trial Court as to why the evidence be not permitted to be recorded by the Local Commissioner. Even otherwise, this Court is of the opinion that no prejudice would be caused to the petitioner if the evidence in the present suit is recorded by the Local Commissioner.

15. With regard to ground that the consent of the petitioner has been wrongly recorded by the learned Trial Court and therefore, the order should be recalled, this Court is of the opinion that Order 26 of the CPC does not require that the order for appointment of the Commissioner can only be passed when the same is consented by the parties. The Court on its own discretion, for the purpose of convenience and for the expeditious disposal of the suit, has the power to appoint Commissioners for recording of the evidence.



16. This petition is without any merits and is therefore, dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JANUARY 23, 2025/“SK”