



(117) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1173-2026

Date of Decision: 04.05.2026

BALWINDER SINGH AND OTHERS

...Petitioners

Vs.

BHUPINDER SINGH AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Amardeep Singh Gill, Advocate
for the petitioners.

VIRINDER AGGARWAL, J. (Oral)

1. The present Civil Revision Petition has been filed under Article 227 of the Constitution of India for the setting aside/quashing of the order dated 19.08.2025 passed by the learned Civil Judge (Senior Division), NRI Court, Jalandhar (Annexure P-3). By the impugned order, the learned trial court has dismissed the application filed under Order XXVI Rule 9 CPC in a manner that is wholly erroneous, illegal, and contrary to the settled principles of law.

2. Vide the impugned order, the application moved by the petitioners/plaintiffs for the appointment of a Local Commissioner in a suit for partition, declaration, and separate possession has been dismissed. The suit pertains to property measuring 42' × 187' (i.e., 28.87 marlas), forming part of Khasra No. 15/3, which is alleged to be under the illegal possession of defendant No. 3(a) and defendants No. 8 to 10. The suit has also been instituted seeking the consequential reliefs of mandatory and permanent injunction. It is pertinent to submit that the respondents/defendants chose not to contest the proceedings and were, accordingly, proceeded against ex parte



during the pendency of the suit. During the course of the proceedings, the petitioners/plaintiffs filed an application under Order XXVI Rule 9 CPC, praying for the appointment of a competent person from the revenue authorities, such as a Halka Kanungo/Ex-Kanungo or any other qualified official, as Local Commissioner. The purpose of such appointment was to conduct a spot inspection and to ascertain whether the residential houses of defendant No. 3(a) and defendants No. 8 to 10 are situated within Khasra No. 15/3 and, if so, to determine the exact extent of the area under their possession. It was specifically averred that the appointment of a Local Commissioner was essential for proper demarcation and for placing accurate factual material before the Court, so as to enable effective and just adjudication of the controversy involved in the suit.

3. The learned Civil Judge, vide the impugned order, declined the application moved by the petitioners/plaintiffs under Order XXVI Rule 9 CPC. While doing so, the Court observed that the burden to prove possession and the respective rights of the parties squarely lies upon the plaintiffs, who are required to establish their case by leading cogent, reliable, and convincing evidence on record. It was further held that the appointment of a Local Commissioner cannot be permitted for the purpose of determining possession or for collecting evidence which the parties are otherwise bound to adduce during trial. The learned Court also observed that the Court cannot be used as a medium or investigative agency to ascertain the location or existence of residential houses of defendant Nos. 3(a) and 8 to 10 within Khasra No. 15/3. Accordingly, the learned Civil Judge was of the view that since it is for the plaintiffs to prove their claim through proper evidence, the appointment of a



Local Commissioner for the purpose sought was neither warranted nor justified, and thus the application was dismissed.

4. I have heard learned counsel for the petitioners at length and carefully considered the matter.

5. The dispute in the present suit pertains to the allegation of the petitioners/plaintiffs that defendant Nos. 3(a) and 8 to 10 have encroached upon a portion of their land comprised in Khasra No. 15/3. The suit has been instituted seeking possession of the specific portion of the said khasra number, along with other consequential reliefs. In view of the nature of the controversy, the identification and demarcation of the suit property becomes essential for proper adjudication of the rights of the parties. The limited purpose of determining whether any portion of Khasra No. 15/3 owned by the petitioners/plaintiffs is under the alleged encroachment of defendant Nos. 3(a) and 8 to 10 cannot be effectively ascertained without local inspection and demarcation.

6. In these circumstances, and keeping in view the provisions contained in Part 'M', Chapter 1, Vol-1 of the Rules and Orders of the Punjab and Haryana High Court, the appointment of a Local Commissioner from the revenue department is found to be appropriate and necessary. Such exercise would facilitate the Court in arriving at a just conclusion by ascertaining the factual position on the spot regarding possession and alleged encroachment, if any, over Khasra No. 15/3. Accordingly, the revision petition is **allowed**. The impugned order dated 19.08.2025 is set aside. The learned trial Court is directed to appoint a competent revenue official as Local Commissioner for the purpose of demarcation of Khasra No. 15/3, within a period of one month



so as to determine whether any portion of the land owned by the petitioners/plaintiffs has been encroached upon by defendant Nos. 3(a) and 8 to 10.

7. The Trial Court Record be returned forthwith.

(VIRINDER AGGARWAL)
JUDGE

04.05.2026
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No