



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

(123)

CR-2795-2026 (O&M)
Date of Decision: **30.03.2026**

KRISHAN @ KRISHAN KUMAR AND OTHERS

... Petitioners

Versus

RANDHIR AND OTHERS

... Respondents

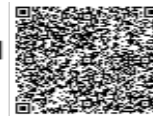
CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Raja Sharma, Advocate
for the petitioners.

VIRINDER AGGARWAL, J. (Oral)

1. The present civil revision petition has been instituted by the petitioners under Article 227 of the Constitution of India, invoking the supervisory jurisdiction of this Court, assailing the order dated 07.03.2026 (**Annexure P-1**) passed by the learned Civil Judge, Gurugram, whereby an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short, "CPC"), preferred by the respondents–plaintiffs, has been allowed at a belated stage, i.e., when the trial had substantially concluded and both parties had already led their respective evidence.

2. The respondents–plaintiffs instituted a civil suit seeking a decree of declaration, coupled with consequential relief of permanent injunction, asserting that they have acquired a legally enforceable right to use a passage situated on the northern side of Khasra No.49, measuring



approximately 15’/16’ in width, for access to their property comprised in Khasra No.48. It was further pleaded that they have acquired easementary rights over the said passage and sought restraint against the petitioners–defendants from raising any construction thereupon.

3. The petitioners–defendants (respondents No.1 and 3 to 6 before the trial Court) contested the suit, *inter alia*, on the grounds that the same is barred by the principle of res-judicata. They categorically denied the existence of any private passage in Khasra No.49 and disputed the respondents–plaintiffs’ *locus standi*, asserting absence of any right, title, or interest in the suit property. It was further averred that the respondents–plaintiffs, along with other adjoining proprietors, have been using an alternative passage through Khasra Nos.48 and 50 for several years. Allegations of suppression of material facts were also raised. The petitioners further asserted that their predecessors were in possession of the suit property as *Dholidars* since the year 1860 and, by virtue of a Court order dated 21.07.2015, they have become owners in possession, with mutation duly sanctioned in their favour.

3.1. It is not in dispute that the respondents–plaintiffs had already concluded their evidence during the pendency of the suit. Thereafter, upon the appearance of DW-1 Sandeep and the alleged failure of the respondents–plaintiffs to elicit favourable responses during cross-examination, an application for appointment of a Local Commissioner came to be filed. The said application, though opposed, was allowed by the learned trial Court vide the impugned order.



4. Aggrieved by the aforesaid order, the present revision petition has been preferred.

5. Learned counsel for the petitioners contends that the discretion exercised by the learned trial Court in appointing a Local Commissioner is wholly misconceived and contrary to settled principles of law. It is urged that the Court cannot permit a party to fill lacunae in its case or assist in the collection of evidence under the guise of a commission. The application, it is submitted, has been moved with the sole intent of gathering evidence after failure to establish the case during trial, particularly when the suit has been pending for nearly eight years without any such request having been made earlier.

5.1. It is further contended that the respondents–plaintiffs, having asserted easementary rights, were under a legal obligation to establish continuous and uninterrupted use of the alleged passage for the statutory period of over twenty years, which cannot be substituted by a local investigation. The learned trial Court is also stated to have been unduly influenced by certain aspects of the cross-examination of defendant No.1, and the impugned order effectively delegates the judicial function of determining possession and factual issues, which is impermissible in law.

5.2. In support of the aforesaid submissions, reliance has been placed upon the judgments of this Court in ***Dharamshala through its Managing Committee vs. Piara Singh and Others (CR-6633-2018, decided on 01.10.2025)***, ***Dalip Kumar vs. Amarjeet Singh and Another, 2015(1) RCR (Civil) 163***, and ***Om Parkash Goyal vs. Kalyan Singh and Others (CR-6466-2016, decided on 27.09.2016)***, wherein it has been held

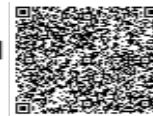


that orders declining appointment of a Local Commissioner do not ordinarily warrant interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

6. I have given my thoughtful consideration to the submissions advanced by learned counsel for the petitioners and have perused the paper-book with due care.

7. In the present case, a perusal of the impugned order reveals that the learned Civil Judge has exercised the jurisdiction vested in it in a judicious manner. The appointment of the Local Commissioner has been directed with a view to ascertain the existing factual position at the spot, so as to facilitate a just and effective adjudication of the controversy. The Local Commissioner has been specifically tasked with reporting on the following aspects:-

- i. **Identify the Property:** Confirm the location of the house shown in Ex. P10 and whether it is occupied/owned by the defendant.
- ii. **Verify the Map (Ex. D4):** Check the existence and location of the Gate at Point D.
- iii. **The Blue Path:** Verify if there is a functional path/rasta at Point C-D as shown in Ex. D4,
- iv. **The Open Space:** Measure the width and length of the space/rasta at Point F-G (North side) and report if it shows signs of usage as a path.
- v. **Alternative Access:** Report whether Khasra No. 48 has any other motorable or pedestrian access to the public firni other than the disputed portion in Khasra No. 49.



7.1. A perusal of the impugned order clearly demonstrates that the learned Civil Judge has appointed a Local Commissioner with the object of facilitating effective adjudication of the dispute between the parties. The purpose of such appointment is to ascertain whether any alternative passage is available to the land of the respondent-plaintiffs, whether there exist physical indications suggesting use of the suit land as a passage, and to verify the correctness of the site plan Ex.D4.

7.2. When the trial Court, in exercise of its jurisdiction, has deemed it appropriate to appoint a Local Commissioner for the purpose of effectively adjudicating the controversy in question, the mere fact of delay in seeking such appointment cannot, by itself, constitute a valid ground for interference with the discretionary order passed by the learned trial Court.

7.2. The learned trial Court has exercised its discretion through a well-reasoned and speaking order, which does not suffer from any illegality, perversity, or jurisdictional error warranting interference in the exercise of revisional jurisdiction of this Court.

7.3. Accordingly, finding no merit in the present revision petition, the same is hereby **dismissed**.

8. It is, however, clarified that the observations recorded here-in-above are confined solely to the adjudication of the present issue and shall not be construed as an expression of opinion on the merits of the underlying dispute. Nothing contained herein shall prejudice or influence the rights, claims, or contentions of either party in any other proceedings, nor shall it be treated as a determination of any substantive question of fact or law in the main matter.



9. In view of the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, stand disposed of by necessary implication. No further orders are required to be passed in that regard.

30.03.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No