



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

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CR-7392-2025 (O&M)
Date of Decision: 14.01.2026

Gurvinder Singh

...Petitioner

V/s

Rupinder Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. M.S. Khaira, Senior Advocate with
Mr. Jarnail Singh, Advocate, for the petitioner.

Mr. Gaurav Chopra, Senior Advocate with
Ms. Darika Sikka, Advocate, for the respondents.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 16.09.2025 (Annexure P-1) passed by the Court of Civil Judge (Jr. Divn.), Yamuna Nagar at Jagadhri, vide which the application filed by the petitioner-plaintiff under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (for short "the CPC") was dismissed.

2. The petitioner-plaintiff (Gurvinder Singh) is the father's brother of respondent-defendant No.1 (Rupinder Singh) and respondent-defendant No.2 (Karamjit Kaur) is the wife of respondent-defendant No.1.

3. The petitioner-plaintiff instituted a suit (Annexure P-1) for declaration to the effect that he had become the owner of three shops, one common passage, two godowns and one residential house (fully described in the plaint) situated near Fountain Chowk, Bhatia Nagar, Jagadhri Road, Yamuna Nagar (hereinafter referred to as "the property in dispute") by way of adverse possession. The case set up was that the respondents-defendants had started claiming that they had purchased the property in dispute and were threatening to dispossess the petitioner-plaintiff. Under the circumstances, the

suit was instituted. Consequential relief of permanent injunction restraining the respondents-defendants from interfering in the actual and physical possession of the petitioner-plaintiff was also sought.

4. During the pendency of the suit, an application (Annexure P-5) was moved for the appointment of a local commissioner and to direct him to visit the spot and submit a report regarding the existing position of shop No.4 and to report as to whether there was any way to approach the godowns except from the common passage. It was averred in the application that after the institution of the suit, the respondents defendants had illegally put a lock on the night of 09.10.2023 on the common passage leading to shop No.4 and in the process they had broken open the lock, put by the petitioner-plaintiff. It was also averred that the defendants had raised the construction of a wall as a result of the which, the petitioner-plaintiff was unable to use the common passage and the godowns. Under the circumstances, the appointment of a local commissioner was sought.

5. The application was opposed by way of a reply (Annexure P-6) wherein all averments were denied. It was also denied that there was a common passage. Breaking open of the lock or construction of a wall was also denied. It was averred that the local commissioner could not be appointed to collect evidence. Dismissal of the application was prayed for.

6. By way of the impugned order dated 16.09.2025, the application was dismissed leading to the filing of the present revision petition.

7. I have heard learned counsel for the parties.

8. Learned Senior Counsel representing the petitioner-plaintiff has submitted that the trial Court erred in dismissing the application for the appointment of a local commissioner. It has been submitted that the local commissioner was being sought to be appointed to ascertain the putting of a lock and construction of a wall, post the institution of the suit and the only

remedy with the petitioner-plaintiff to bring the said facts to the notice of the Court was by way of appointment of a local commissioner. It has been submitted that the local commissioner cannot, by any stretch of imagination, be said to be, sought to be appointed for collection of evidence. It would be for the petitioner-plaintiff to prove his own case as pleaded in the plaint by leading cogent evidence. However, the factum of the lock having been put and a wall having been constructed after the institution of the suit would have to be brought on record only by way of appointment of a local commissioner and in case, the said facts are not brought to the notice of the Court, by the time the evidence of the petitioner-plaintiff starts, the issue will lose its importance. In support of his contention, learned Senior Counsel has placed reliance upon the judgments in ***Ram Lal and others vs. Salig Ram and others, (2020) 11 SCC 590, Sulemankhan Mumtajkhan and others vs. Bhagirathibai Digamber Asalmol & another, 2014 Legal Eagle (BOM) 440 and Kashinath Ramkrishna Chopade vs. Pursushottam Tulshiram Tekade & others, 2005 Legal Eagle (BOM) 779.***

9. *Per contra*, learned Senior counsel representing the respondents-defendants has submitted that the instant revision petition is not maintainable since no revision petition is maintainable against an order dismissing the application for appointment of a local commissioner. It has also been submitted that a local commissioner can never be appointed for the purpose of collecting evidence on behalf of the plaintiff and it would be for the plaintiff or any other party to prove its own case by leading cogent evidence. In support of his contentions, he places reliance upon the judgments in ***Palwinder Singh (now deceased) through his LRs vs. Surinder Kumar and another (CR-5437-2024, decided on 19.09.2024, by a coordinate Bench of this Court), Harchand vs. Karambir Singh and another, 2022 SCC OnLine***

P&H 1777 and Pritam Singh and another vs. Sunder Lal and others, 1990 SCC OnLine P&H 277.

10. I have considered the submissions made by learned Senior counsel for the parties.

11. Concededly, a suit was instituted by the petitioner-plaintiff for declaration along with consequential relief of permanent injunction. His categorical stand in the application was that post the institution of the suit, the respondents-defendants had put a lock by breaking open the lock put by the petitioner-plaintiff and had also constructed a wall as a result of which, the petitioner-plaintiff could neither use the passage nor the godowns in question. This fact, in the considered opinion of this court, can be determined only by appointing a local commissioner and would have to be brought on record if such an act has indeed been committed. If such an act has not been committed, the same shall also be brought on record by the local commissioner. In the considered opinion of this Court, the trial court erred in holding that a Court is not to collect evidence on behalf of the plaintiff. In the instant case, there is no question of collecting evidence on behalf of the plaintiff because the plaintiff, in any case, will prove his own case when his evidence commences. These facts, which the plaintiff alleged in the application, would be essential to be brought on record. In fact, for these very situations, the provision has been enacted and it is a fit case where the trial Court should have exercised its jurisdiction and should have appointed a local commissioner. In taking this view, I am supported by the judgment of the Hon'ble Apex Court in the case of ***Ram Lal and others*** (supra) and the judgment of the Bombay High Court in the case of ***Sulemankhan Mumtajkhan and others*** (supra) wherein, the Bombay High Court held that where the issue was as regards encroachment of property, it would always be desirable to have the disputed suit property measured by a competent surveyor

to find out the encroachment and its extent. In so far as the judgments relied upon by the Senior Counsel for the respondents-defendants are concerned, the present petition is a petition under Article 227 of the Constitution of India and not a revision petition under Section 115 CPC. The judgments which hold that a revision petition would not be maintainable would, therefore, not come to the aid of the respondents-defendants.

12. That being so, the instant petition is duly maintainable. In any case, to do substantial justice, powers under Article 227 of the Constitution of India can always be invoked.

13. This Court, is therefore, of the considered opinion that the application for the appointment of a local commissioner was erroneously declined by the trial Court.

14. Accordingly, the present revision petition is allowed. The impugned order dated 16.09.2025 (Annexure P-1) is set aside. Consequently, the application filed by the petitioner-plaintiff for the appointment of a local commissioner is allowed. The trial Court is directed to appoint a local commissioner for ascertaining the assertions made in the application as per its own schedule and in accordance with law.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

January 14, 2026

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