



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(125)

CR No.1302 of 2025 (O&M)  
Date of Decision: 04.03.2025

Ramesh

...Petitioner

Versus

Nathu Ram deceased thr his LR Khushi Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Yash Gupta, Advocate  
for the petitioner.

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VIKRAM AGGARWAL, J (ORAL)

CM-4320-CII-2025

Allowed as prayed for, subject to all just exceptions.

CR No.1302 of 2025

The present revision petition assails two orders, both dated 14.02.2025 (Annexures P-9 and P-10) vide which the objections filed by the petitioner/JD against the report of the Local Commissioner and the application seeking to summon the Local Commissioner for cross-examination were dismissed.

2. The facts, as emanating from the revision petition, are that respondent No.1-plaintiff filed a suit for permanent injunction seeking to restrain the petitioner-JD from raising any construction over residential property (fully described in the plaint) situated in Dhondh Khurd, Ward No.2, Ferozpur Jhirka (hereinafter referred to as the suit property) and from dispossessing respondent No.1-plaintiff from the same. The said suit was decreed vide judgment and decree dated 13.08.2015 (Annexure P-2).

3. Execution petition (Annexure P-2) was filed by respondent No.1-plaintiff. During the pendency of the same, a Local Commissioner was appointed vide order dated 01.12.2021 (Annexure P-3). Thereafter, report dated 10.03.2023 (Annexure P-4) was submitted by the Local Commissioner. Objections (Annexure P-5) were filed against the said report by the petitioner-JD. The same were opposed by way of reply (Annexure P-6). Another application for summoning the Local Commissioner as a Court witness (Annexure P-7) was also filed which was also opposed by way of a reply (Annexure P-8). Both applications were dismissed vide order dated 14.02.2025 (Annexure P-9 and P-10) leading to the filing of the instant revision petition.

4. I have heard learned counsel for the petitioner.

5. Learned counsel has strenuously urged that the impugned orders are not sustainable. He refers to the provisions of Order 26 Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC') and contends that permission should have been granted to summon the Local Commissioner so that he could be examined. Learned counsel submits that the order dated 01.12.2021 vide which the Local Commissioner had been appointed had specifically directed the Local Commissioner to place on record the current photographs of the site in question which was not done and, therefore, the report was incomplete and vague. He submits that on account of the dismissal of the application, the rights of the petitioners have been gravely prejudiced. In support of his contentions, learned counsel has placed reliance upon a judgment passed by a Division Bench of this Court in ***Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander 1989 AIR (P&H) 257*** and Judgments passed by Coordinate Benches of this Court in the case

of *Om Parkash Vs. Ram Kumar 2020(2) PLR 28* and *Roshan Lal Vs. Jai Singh and others 2015(4) RCR (Civil) 1032*.

6. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit. Order 26 CPC deals with commissions. Rule 9 thereof provides for commissions to make local investigations and Rule 10 deals with the procedure. Rule 10(ii) provides that the report of the Commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he had made the investigation. Rule 10(iii) empowers the Court to order further inquiry if it feels dissatisfied with the proceedings of the Commissioner. These provisions came to be interpreted by a Division Bench of this Court in the case of *Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander* (supra) and upon interpretation, it was held as under :-

***“Thus, from the provisions of Order 26 Rule 10, it is quite evident that there is no provision for inviting any objections to the report of the Local Commissioner appointed under rule 9 thereof. In case, any such objections are filed by either of the parties to draw the attention of the Court as to the inherent defect therein, the Court may consider the same and if for any reason dissatisfied with the proceedings of the Commissioner, may direct such further inquiry to be made as it shall think fit but neither of the parties is entitled to claim any issue with respect to the report. The only provisions under sub rule 2 of Rule 10 of Order 26 of the Code is to examine the Commissioners personally in open Court either by the Court itself or by any of the parties with the permission of the***

*Court. The objection, if filed by the parties, shall be considered after the cross-examination, if any, of the Local Commissioner by the Court under Rule 10 of Order 26 of the Code and that too along with the other evidence at the time of final hearing.”*

7. Reverting to the facts of the present case, the first objection raised by learned counsel for the petitioner that the report of the Local Commissioner was not given in accordance with the directions issued vide order dated 01.12.2021 is devoid of merit. The impugned order duly notices that the demarcation report, prepared using a DGPS machine clearly indicated encroachment on the suit land by the judgment-debtors and that the corresponding photographs were available on the file. The argument that no photographs had been annexed with the report, therefore, falls to the ground.

8. Still further, the executing Court rightly observed that the issue raised in the objections had already been addressed and decided during the trial and there was no remaining ambiguity or dispute. It was rightly held that the judgment-debtor could not argue that the decree-holder was entitled to less area than what was originally allotted. It was also observed that the appeal against the judgment and decree had also been dismissed and, therefore, the executing Court could not go beyond the decree. The Court also placed complete reliance upon the report of the Local Commissioner by observing that the DGPS machine provides centimeter-level accuracy, for it operates by utilizing a network of ground-based reference stations that compare GPS satellite data to determine positions. It was observed that these stations calculate correction factors, which are transmitted to a rover receiver at the property site and, therefore, the DGPS report is scientifically accurate and reliable. As regards the prayer for summoning the Local Commissioner,

the executing Court held that it was not mandatory for the Court to examine the Local Commissioner and there had to be a valid reason for such an examination. It was rightly held that the discretion lies in such matters with the executing Court.

9. If one goes through the provisions of Order 26 Rule 10 CPC and the judgment of the Division Bench of this Court in the case of ***Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander*** (supra), there remains no doubt in the mind of the Court that the impugned order is completely legal and valid and has been passed strictly in terms of the provisions of the statute and the law on the subject. There is no jurisdictional error or other illegality in the impugned order warranting interference. It has to be borne in mind that matters have to attain finality and unsuccessful litigants cannot be permitted to keep the matter alive by raising frivolous pleas.

10. In the case of ***Om Parkash Vs. Ram Kumar*** (supra), a Coordinate Bench had granted an opportunity to the petitioner to cross-examine the Local Commissioner. However, the said opportunity had been granted in the particular facts of that case during the course of the trial and not at the stage of execution. In any case, it was the discretion of the Court concerned to examine the matter and then take a decision. The said decision has not been found by this Court to be suffering from any illegality or error. For the same reasons, the judgment in case of ***Roshan Lal Vs. Jai Singh and others*** (supra) would not come to the aid of the petitioner.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

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

**(VIKRAM AGGARWAL)**  
**JUDGE**

**March 04, 2025**

Rekha

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