



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

129

CR-2470-2025 (O&M)
Date of decision: 20.05.2025

Tarsem Lal

...Petitioner

V/s

Jagir Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Akhil Dadwal, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 19.02.2025 (Annexure P-5) passed by the Court of Civil Judge (Jr. Divn.), Mukerian, vide which the application filed by the petitioner-plaintiffs under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (for short the "CPC") for the appointment of a revenue expert as a local commissioner was dismissed.

2. The facts, as emanating from the revision petition, are that the petitioner (Tarsem Lal along with other six persons) instituted a suit for possession of land measuring 5 *marlas* (fully described in the plaint) situated in Village Beh Khushalla, Tehsil Mukerian, District Hoshiarpur (hereinafter referred to as the "suit land") against the respondents-defendants (Jagir Singh and others). Relief of mandatory injunction directing the respondents-defendants to stop their flow of waste, foul and dirty water etc. into the suit land and restraining them from changing the nature of the suit land was also sought. The suit was decreed vide judgment and decree dated 06.12.2022 (Annexure P-1) by the Court of Civil Judge (Jr. Divn.), Mukerian. A counter claim had also been filed by the respondents-defendants No.1 and 2 stating that a public passage had been encroached upon by the plaintiffs. The said counter claim was also decreed. No execution petition was filed by the



plaintiffs. However, an execution petition (Annexure P-2) was filed by the defendants/counter-claimants. During the pendency of the said execution petition, the plaintiffs filed an application (Annexure P-3) under Order 26 Rule 9 CPC for the appointment of a local commissioner. It was averred in the application that the plaintiffs/JDs in the counter claim had already removed the encroachment and further that the defendants/deed-holders in the counter-claim had encroached upon land measuring 7 *marlas* 7 *sarsais* in Khasra No.962. A reply (Annexure P-4) was filed to the said application, wherein the said averments were denied. However, it was stated that they had no objection if a local commissioner is appointed. The application for the appointment of a local commissioner was however, dismissed by way of the impugned order dated 19.02.2025 leading to the filing of the present revision petition.

3. I have heard learned counsel for the petitioner.

4. Learned counsel for the petitioner submits that despite the fact that the defendants/deed-holders/counter-claimants had stated that they had no objection if the local commissioner was appointed, the executing Court erroneously dismissed the application. He submits that the appointment of local commissioner would be essential as the defendants have themselves encroached upon 7 *marlas* 7 *sarsais* of land, whereas the plaintiffs have already removed the encroachment, which they were alleged to have made. He submits that under the circumstances, the appointment of a local commissioner would be essential to determine the exact position at the spot. He also submits that in the garb of execution of the counter-claim, encroachment has been made by the defendants.



5. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit.

6. While decreeing the suit, the trial Court recorded the following findings;

“46. As a sequel to my findings over the above said issues, the suit of the plaintiffs is decreed with costs to the extent that plaintiff is entitled to the possession of land measuring 3Mls-5 Sarsahis as shown in green colour in the site plan Ex.CW1/E filed by the Local Commissioner after removal of superstructure/temporary construction comprised in Khewat No. 100/98, Khatoni No.273, Khasra No. 963 (2-15) situated in village Beh Khushalla, H.B. No.569 Tehsil Mukerian, Distt. Hoshiarpur and are further entitled to relief of mandatory injunction to the extent that defendants are directed to stop their flow of the waste, foul and dirty water into the property of the plaintiffs and are further restrained from changing the nature of the suit property by digging earth or by way of raising construction. Similarly, the counter claim filed by the counter claimants/defendants No.1 and 2 is decreed with costs and counter claimants are entitled to the relief of mandatory injunction to the extent that plaintiffs/respondents are directed to vacate or clear the passage after removing the encroachment and fence from the eastern side of Khasra No. 962 (2-0) comprised in Khewat Number 188/176, Khatoni Number 469 situated at village Beh Khushala, H.B. No. 569, Tehsil Mukerian, Distt. Hoshiarpur as per Fard Jamabandi for the year 2011-12 as reflected in red colour in the site plan Ex.CW1/E filed by the Local Commissioner. Counter claimants are further entitled to relief of permanent injunction and plaintiffs are restrained from interfering, blocking, occupying and from further changing the nature of the suit property by way of any construction/obstacle. Report of Local Commissioner as well as site plan filed by the Local Commissioner is made part of this judgment and decree. Any Misc. application pending in the present case, if any, is disposed off being not pressed. Decree sheet be prepared and file be consigned to the Judicial Record Room after due compilation.”

A perusal of the aforesaid shows that a local commissioner had duly been appointed during the course of the trial and depending upon the report of the local commissioner, the decision was arrived at. The plaintiffs



were held entitled to possession of land measuring 3 *marlas* 5 *sarsais* as shown in green colour in the site plan filed by the local commissioner and the counter-claimants were held entitled to relief of mandatory injunction. The plaintiffs were directed to vacate the passage after removing the encroachment and fence from the eastern side of Khasra No.962.

7. Concededly, no execution petition was filed by the plaintiffs. However, the defendants/counter-claimants preferred an execution petition as regards the possession of the passage after removal of encroachment from Khasra No.962. It is during the pendency of the said execution petition that the application for the appointment of a local commissioner was filed stating that the defendants/counter-claimants had encroached upon land measuring 7 *marlas* 7 *sarsais* in Khasra No.962 and that the plaintiffs had removed their part of the encroachment. Though, despite opposing the application, it was stated in the reply that the defendants did not have any objection to the appointment of a local commissioner, the learned executing Court dismissed the application and held that the issue regarding encroachment and appointment of local commissioner had already been adjudicated upon and settled in the suit, therefore, at the stage of execution, local commissioner was not required to be appointed. It was rightly held that if the plaintiffs/JDs in the counter-claim had any grievance qua Khara No.962/963, they were free to file a separate execution petition.

8. In the considered opinion of this Court, there is no illegality in the said decision of the executing Court because the same dispute cannot be re-agitated repeatedly. As was held by the executing Court, it would always be open for the plaintiffs to file an execution petition to seek execution of the judgment and decree passed in their favour.



9. That being so, 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

May 20, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No