



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

(131)

CR No.280 of 2025

Date of Decision: 21.01.2025

Dhian Singh

...Petitioner

Vs

Channan Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Naveen Batra, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition is directed against order dated 19.12.2024 (Annexure P-5) passed by the Court of learned Additional Civil Judge (Sr. Division), Sri Anandpur Sahib vide which request of the petitioner to cross-examine the Local Commissioner appointed by the Court to demarcate the land was rejected.

2. A suit for possession was filed by the respondent-plaintiff Channan Singh. During the pendency of the suit, an application for appointment of a Revenue Expert as a Local Commissioner was filed by the respondent-plaintiff. The same was allowed vide order dated 23.08.2023 (Annexure P-3). The Halqa Kanungo was accordingly appointed as the Local Commissioner. He was directed to visit the spot and demarcate the suit property. On receipt of the report of the Local Commissioner, an objection petition against the same was filed by appellant-defendants. Thereafter, a request for cross-examining the said Local Commissioner was also made, which was rejected by the learned trial Court on the ground that

since the Local Commissioner had not appeared as a witnesses and his examination-in-chief had not been recorded, he could not be permitted to be cross-examined.

3. Learned counsel for petitioner submits that the trial Court erred in rejecting the request of the petitioner to cross-examine the Local Commissioner. Reliance has been placed upon the provisions of Order 26 Rule 10 (2) of the Code of Civil Procedure 1908 (for short 'CPC') and the judgment of the Coordinate Bench in the case of ***Modan Singh Vs. Gram Panchayat, 2022 AIR (Punjab and Haryana) 67.***

4. I have considered the submissions made by learned counsel for the petitioner.

5. Order 26 Rule 10 (2) CPC lays down as under:-

“10. Procedure of Commissioner:

(1) xxx

(2) Report and depositions to be evidence in suit-The report of the Commissioner and the evidence taken by him (but not the evidence without the report) 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 has made the investigation.”

6. In the case of ***Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander, 1989(1) PLR 677***, it was held by a Division Bench of this Court that there was no provision for inviting any objections to the report of the Local Commissioner nor were any of the parties entitled to claim any issue with respect to the report. It was held that the objection, if filed by the parties would be considered after the cross-examination of the

Local Commissioner by the Court and that too along with the other evidence at the time of final hearing.

7. In the case of *Modan Singh Vs. Gram Panchayat* (supra), a Coordinate Bench of this Court while relying upon the judgment in the case of *Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander (supra)*, also reiterated the said position. The provisions of Order 26 Rule 10 (2) CPC lays down that a Local Commissioner could be cross-examined by the Court or an opportunity could be given to the parties as also to cross-examine the Local Commissioner. Under the circumstances, the view taken by the trial Court that since the Local Commissioner had not appeared in the examination-in-chief and therefore, cross-examination could not be conducted is erroneous and is contrary to the provisions of law.

In view of the above, the revision petition is allowed, impugned order is set aside and the matter is remitted to the trial Court for taking a fresh decision on the application in accordance with law keeping in view the provisions of Order 26 Rule 10 (2) CPC and the position of law as laid down in the cases referred to above.

(VIKRAM AGGARWAL)
JUDGE

January 21, 2025

Rekha

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