



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

**CR-2617-2017(O&M)**

**Date of Decision: May 08, 2025**

Dhire through LRs

...Petitioner

Versus

Randhir and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Rakesh Nehra, Senior Advocate with  
Ms.Bindu Tanwar and Mr.Reetesh Kumar, Advocates  
for the petitioner.

Mr.Sumit Gupta, Advocate  
for contesting respondents No.1 and 2.

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**ARCHANA PURI, J.**

Challenge in the present revision petition is to the order dated 04.03.2017 passed by learned trial Court, whereby, an application filed by the contesting respondents (plaintiff before learned trial Court), for leading additional evidence, was allowed.

In pursuance of the notice issued, contesting respondents made appearance through counsel.

Learned counsel for the parties heard.

The essential facts, to be noticed, as culled out from the paperbook are as follows:-

That, initially, the respondents No.1 and 2 (plaintiffs) had filed a suit

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for possession of the suit land, therein stating that they are owners of khasra No.1375 to the extent of 1/3rd share, in the land comprised in Khewat No.80/84 min, Khatoni No.214 min 2 Bigha 19 Biswas and that the petitioner and another (defendants) are owner of Khasra No.1376 and now, defendants have encroached upon Khasra No.1375, shown in the site plan as 'ABCDEFGH'.

The petitioner-defendant made appearance and filed the written statement, thereby, asserting about respondents-plaintiffs to be neither owners nor in possession of the suit property and the suit land 'ABCDEFGH' is part of Khasra No.1376.

During the pendency of the said suit, an application was filed for appointment of the Local Commissioner and vide order dated 08.09.2010, Sh.Virender Singh, Advocate, who was present in the Court, at the relevant time, was appointed as Local Commissioner. Thereupon, report was submitted before the trial Court and thereupon, learned trial Court had passed the order dated 06.02.2012 (Annexure P-1) and the essential part of the said order is reproduced in verbatim, as herein given:-

*“On perusal of the case file, it is noticed that vide the order dated 8.9.2010, Shri Virender Singh, Advocate was appointed as the Local Commissioner in the present case with the direction to report about the existing position of the suit property regarding construction, if any raised over the same. The report of the Local Commissioner has since been received and opportunity for objections to the report was provided. In these circumstances there is no requirement for arguments on the report of the Local Commissioner because the report of the*



*LC shall be considered at the time of disposing of the suit. Hence, on the pleadings of the parties the following issues are framed:-*

*XXXX XXX XX XXXX*

*No other issue is pressed or claimed before me. The burden of proof is not disputed. Let the PWs be now produced on 30.5.2012 at own responsibility. The list of witnesses, DM, if any, be filed within 15 days.”*

After framing of the issues, the case was adjourned for production of witnesses for 30.05.2012. Thereafter, the contesting respondents again moved an application under Order 26 Rule 9 read with Section 151 CPC, for appointment of Local Commissioner, which was dismissed by learned trial Court vide order dated 21.03.2013, while stating that the report of the Local Commissioner is already on record and there is no need to appoint another Local Commissioner. Further, it was also observed that moreover, the plaintiffs are at liberty to demarcate his land by approaching the revenue authorities. The copy of the order dated 21.03.2013 is Annexure P-2. Thereafter, again respondents-plaintiffs led evidence and their evidence was closed by order.

After the evidence was led by the plaintiffs, the evidence of the defendants was also recorded and the same was closed by order vide order dated 26.05.2014 and the matter was adjourned to 03.07.2014 for rebuttal evidence, if any and for arguments. The order dated 26.05.2014 (Annexure P-4), to this effect, is reproduced in verbatim, as herein given:-

*“Today cross-examination of PW-Dheer Singh is completed.*

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*Learned counsel for the defendant tendered a document Ex.D-8 to D-10 & 10/T and mark E and closed the defendant evidence. Now matter is adjourned to 03.07.2014 for rebuttal evidence, if any and for arguments”.*

Thereafter, an application for leading additional evidence, by which, the respondents-plaintiffs intended to bring on record the report of the Local Commissioner, made by one Hoshiyar Singh Girdwar in Civil Suit No.269/94 and to call said Hoshiyar Singh Girdwar to prove the said report. But however, the said application was again dismissed by learned trial Court, vide order dated 18.07.2014, copy whereof is Annexure P-5. To assail the order dated 18.07.2014, the respondents-plaintiffs filed CR-4993-2014 and the said revision petition was also dismissed by this Court on 27.11.2015. The copy of the said order is Annexure P-6.

Subsequent to the said order, again, the respondents-plaintiffs filed an application for appointment of the Local Commissioner on 24.02.2016 and this was the 3<sup>rd</sup> application filed and even the said application was dismissed by learned trial Court vide order dated 07.09.2016, copy whereof is Annexure P-7. Therein, it was specifically observed by learned trial Court that from filing of this 3<sup>rd</sup> application, for the same purpose, it appears that the plaintiff intends to secure the Local Commissioner report through a revenue official of his choice and may be of his favour and further also, an observation was made that perusal of the file reveals that the plaintiff is habitual of moving applications, one after the another and his only intention, appears to be to delay the Court proceedings.

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It was only after the dismissal of the application for appointment of Local Commissioner that the contesting respondent-plaintiff had filed CWP-23214-2016 before this Court, stating therein, that he had made representation dated 16.09.2016 to the respondent authorities and the same has not been decided. This Court had disposed of the aforesaid writ petition vide order dated 09.11.2016, while issuing directions to the authorities to decide the representation. The copy of the said order is Annexure P-8. On the basis of the aforesaid order, demarcation was got conducted by respondents-plaintiffs on 07.12.2016 and thereafter, again on 18.01.2017, another application for additional evidence, was filed before the trial Court, for placing on record the copy of the demarcation report dated 07.12.2016 and various other documents and reply to the same, was also filed. The said application was allowed by learned trial Court vide impugned order dated 04.03.2017.

Being aggrieved, the petitioner has filed the present revision petition.

No doubt, time and again, it has been held by the Courts that any evidence, which the Court deems essential for the adjudication of the controversy, can be allowed by the Court, but however, various circumstances, spelt out, vis-a-vis, the conduct of the party, who seeks leading of the additional evidence, ought to be taken into consideration. In the case in hand, the respondents-plaintiffs had filed a suit for possession. The dispute relates to Khasra No.1375 and part of the same, having encroached by the petitioners-defendants who own Khasra No.1376. It was

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on this pretext that the suit for restoration of possession was filed. Meaning thereby, the position was very clear to the respondents-plaintiffs, at the time of filing of the suit about the relief sought by them. In the case in hand, at first instance, vide order dated 08.09.2010, the Local Commissioner was appointed by the Court, at the behest of the respondents-plaintiffs and the report had come and the same was taken on record by learned trial Court and it was specifically observed in the order dated 06.02.2012, before framing of issues that said the report, shall be considered, at the time of disposing of the suit.

Again, second application for appointment of Local Commissioner was filed and the same was dismissed and thereafter, application for additional evidence to prove the report of Local Commissioner, appointed in Civil Suit No.269/94, was filed and the same was also dismissed by learned trial Court and specifically, it was observed therein that no such evidence, can be adduced. It was assailed before this Court by filing revision petition and the same was dismissed vide order dated 27.11.2015. Thereupon, an application was filed for appointment of the Local Commissioner, which is 3<sup>rd</sup> application, to demarcate the suit property, but however, considering the manner of filing of the application and the stage of the filing of the application, the same was dismissed by learned trial Court. Rather, an observation was made about the intention of the plaintiff to secure the Local Commissioner's report, through revenue official of his choice and further, it was observed that 'may be of his favour'. Also, it was observed that plaintiff is habitual of moving the

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applications, one after the another and his only intention, appears to delay the proceedings.

Thereupon, the civil writ petition was filed. However, the copy of the civil writ petition has been placed on record by learned counsel for the petitioner. Close perusal of the same reveals that the previous applications filed for appointment of Local Commissioner and of additional evidence were though mentioned, but however, there was no mention made about the 3<sup>rd</sup> application having so filed and the outcome of the same and in this manner, while concealing the material fact, the order was obtained from this Court, with regard to the issuance of directions to the authorities concerned.

In this backdrop, demarcation report was again submitted. Nothing, as such, is coming on record, about the petitioners-defendants to have been associated in the demarcation process and this too was obtained at the fag end, after filing multiple applications for appointment of the Local Commissioner, which have been dismissed by learned trial Court.

Considering the same, at this stage, looking at the manner of obtaining of the order from this Court and consequently, demarcation got conducted, as such, cannot be brought on record, in the manner, as now sought for. Furthermore, it is also necessary to note that no satisfactory reasoning has been given by the trial Court for allowing the application. It only mention that if there is one demarcation report conducted, the second report, even if it comes, new demarcation report will only assist the Court, for proper comparison of the reports, to decide the dispute effectively. However, this is no reason, to allow the application, when earlier multiple

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applications filed at the instance of the respondents-plaintiffs, were dismissed, more particularly, when in the writ petition, there was no reference made to the 3<sup>rd</sup> application for demarcation filed and particularly, of the dismissal of the same, with observations made by learned trial Court, with regard to the conduct of the respondents.

Considering the aforesaid seriatim of facts, as spelt out, the impugned order passed by learned trial Court is erroneous, which warrants interference, while exercise of the revisional jurisdiction. Hence, the impugned order dated 04.03.2017 is set aside and the application for leading additional evidence is dismissed.

In view of the aforesaid observations, the revision petition is hereby allowed.

**May 08, 2025**  
Vgulati

**(ARCHANA PURI)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**Yes/No**