



CR No. 6802 of 2025 (O&M)

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6802 of 2025 (O&M)
DATE OF DECISION: 24.09.2025

BHAGWANI @ BHAWATI

.....PETITIONER

Vs.

RATI RAM

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Sanjay Mittal, Advocate,
for the petitioner.

AMARINDER SINGH GREWAL, J.

1. Prayer in the present Civil Revision Petition filed under Article 227 of the Constitution of India is for setting aside the impugned order dated 19.03.2025 (Annexure P-8), passed by the learned Additional Civil Judge (Senior Division), Narnaul, whereby the application filed by the petitioner for appointment of a Local Commissioner was dismissed.
2. The brief facts of the case are that the petitioner-plaintiff, Smt. Bhagwani alias Bhawati, had filed a suit for declaration before the learned Civil Judge (Senior Division), Narnaul, to the effect that the impugned judgment and decree dated 03.06.1995 passed in Civil Suit No. 409 of 1995, instituted on 18.05.1995, titled *Rati Ram and another vs. Gindo and others*, by the then learned Senior Sub-Judge, Narnaul, to the extent of the share of the plaintiff and her mother, namely Smt. Gindodi, in the property to the extent of half share in favour of one set of contesting defendants, was absolutely wrong. She further sought a declaration to the effect that the



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alleged registered exchange deed No. 2347, dated 02.09.2016, purported to have been executed between sets I and II of contesting defendants pertaining to a part of the present suit property, was also illegal, and also sought a decree for permanent injunction against the contesting defendants restraining them from alienating or creating any charge over any part of the suit property in any manner, as detailed in the plaint.

2.1 Upon notice, defendant No. 1-respondent appeared and filed a written statement on 15.05.2023 (Annexure P-2).

2.2 During the pendency of the suit, on 30.11.2019 (Annexure P-3), the learned Additional Civil Judge (Senior Division), Narnaul, granted stay regarding changing the nature of the suit land. Further, vide Annexure P-4, a petition for disobedience/violation of the injunction order dated 30.11.2019 (Annexure P-3) was also filed. It was alleged in the petition that in the last week of December 2022, the respondent/defendant had started construction works at a war footing at the suit property with the help of a large number of labourers.

2.3 The said petition was contested by the respondent. Thereafter, the petitioner filed an application (Annexure P-6) under Order XXVI Rule 9 read with Section 151 CPC for appointment of a Local Commissioner, submitting that it had become necessary to appoint a Local Commissioner, who may be directed to visit the site and report about the existing state of affairs, including the construction allegedly raised by the respondent over the suit land.

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2.4 The said application was contested by the respondent. Ultimately, the learned lower Court dismissed the application vide order dated 19.03.2025 (Annexure P-8), which is under challenge in the present petition.

3. Learned counsel for the petitioner submits that since the respondent had raised, and is still raising, construction in spite of the stay order passed by the learned Additional Civil Judge (Senior Division), Narnaul, it was simply prayed before the learned lower Court that a Local Commissioner may be appointed, who should visit the spot and report regarding the actual and physical possession of the suit property. In this regard, the attention of this Court was also drawn to the photographs (Annexure P-9).

4. I have heard learned counsel for the revisionist-petitioner and perused the paper-book.

5. In view of the order proposed to be passed, notice is not being issued to the respondent as it would delay the proceedings besides entailing additional expense to the respondent.

6. The learned Additional Civil Judge (Senior Division), Narnaul, in its order dated 19.03.2025 (Annexure P-8) held that since a contempt petition had already been filed by the applicant, the burden of proving disobedience and violation of the stay order was upon the plaintiff/applicant, and he could not take the assistance of the Court in this regard. It was further held that the appointment of a Local Commissioner in the facts and circumstances would amount to assisting the case of the



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plaintiff/applicant by collecting evidence on his behalf, which is not legally permissible.

7. Keeping in view the above, and after hearing learned counsel for the petitioner, this Court is of the considered opinion that the petitioner-plaintiff had filed a suit for declaration and permanent injunction, and as noticed above, the stay was also granted by the learned Additional Civil Judge (Senior Division), Narnaul, vide order dated 30.11.2019 (Annexure P-3) restraining change in the nature of the suit land. The simple contention of the petitioner is that a Local Commissioner may be appointed, who should report regarding the actual and physical possession of the suit property. From the facts of the present case, it is evident that part of the controversy relates to the existing possession of the suit property.

8. Considering the facts and circumstances of the case, this Court is of the view that for the purpose of effective adjudication of the dispute between the parties, it was necessary to ascertain the existing position at the spot. Had a Local Commissioner been appointed by the learned lower Court, it would have enabled the Court to correctly appreciate the controversy between the parties and thereafter decide their respective rights in an effective manner. Since the petitioner had also brought to the notice of the Court that construction was still going on over the disputed property, it was essential for the learned lower Court to appoint a Local Commissioner, who could have inspected the spot and reported regarding the actual and physical possession of the property in dispute, as well as the construction raised thereupon.

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9. Since a Local Commissioner under Order XXVI Rule 9 CPC can be appointed at any stage, the learned lower Court erred in dismissing the application for appointment of a Local Commissioner and in holding that such appointment would amount to assisting the petitioner-plaintiff by collecting evidence on his behalf.

10. Consequently, the present petition is allowed. The impugned order dated 19.03.2025 (Annexure P-8), passed by the learned Additional Civil Judge (Senior Division), Narnaul, is set aside. The learned Court below is directed to appoint a Local Commissioner/Revenue Officer to visit the spot and submit a report regarding the actual and factual position of the of the property in dispute, as well as the construction raised thereupon, so as to facilitate proper adjudication of the case.

11. However, it is made clear that since the present petition is being allowed without issuing notice of motion to the respondent, the respondent shall be at liberty to move an appropriate application, in case any fact has been mis-stated, misconceived or suppressed in the present petition, or by showing sufficient cause, for modification or recall of this order.

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

September 24, 2025
nitin

(AMARINDER SINGH GREWAL)
JUDGE

Whether Speaking	Yes
Whether Reportable	No