



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CR-1308-2025 (O&M)  
Date of Decision: 05.03.2025

Dimple Kumar

...Petitioner

V/s

Parmanand and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Shiv Kumar, Advocate, for the petitioner.

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**VIKRAM AGGARWAL, J (ORAL)**

The present revision petition is directed against the order dated 30.01.2025 (Annexure P-11), passed by the Court of learned JMIC, Mukerian, vide which the application filed by the petitioner-plaintiff for the issuance of directions to the concerned Naib Tehsildar, Hajipur to ascertain as to whether the suit property falls within the *Lal Lakir* or the same is a part of *Khasra* No.68, was dismissed.

2. The facts, as emanating from the revision petition, are that a suit (Annexure P-1) for permanent injunction was filed by the petitioner-plaintiff against the respondents-defendants restraining them from dispossessing the petitioner-plaintiff or from interfering in his possession over land measuring 6 *marlas* 7 *sarsahis* situated within *Lal Lakir* of village Jhang, Hadbast No.345, Tehsil Mukerian, District Hoshiarpur (hereinafter referred to as the "suit property"). It was also averred that partition proceedings amongst the parties were already pending. The suit was opposed by way of written statement (Annexure P-2), wherein a stand was taken that the suit property was within the *Lal Lakir* but was not a part of *Khasra* No.68 and the same had been sold



to them. The possession of the petitioner-plaintiff over suit property was also denied. It was admitted that partition proceedings were pending.

3. An application for the appointment of a revenue expert as a local commissioner was moved by the respondents-defendants under Order 26 Rule 9 CPC (Annexure P-3). Reply (Annexure P-4) to the application was filed by the petitioner-plaintiff, wherein it was stated that the application for the appointment of local commissioner be allowed so that it could be ascertained as to whether the suit property was within the *Lal Lakir* or was a part of *Khasra* No.68. The said application was, however, dismissed vide order dated 22.07.2024 (Annexure P-5).

4. Thereafter, another application (Annexure P-6) under Order 26 Rule 9 CPC was filed by the petitioner-plaintiff seeking the same relief. Reply was filed by the respondents-defendants (Annexure P-7), in which the application was opposed. This application also came to be dismissed vide order dated 19.11.2024 (Annexure P-8) and costs of Rs.2000/- were also imposed.

5. Undeterred, another application was filed by the petitioner-plaintiff for the issuance of directions to the concerned Naib Tehsildar, Hazipur for conducting the demarcation of the suit land to ascertain as to whether it fell within the *Lal Lakir* or it was a part of *Khasra* No.68. This application was again opposed by way of reply (Annexure P-10) and the said application has now been dismissed vide the impugned order dated 30.01.2025 (Annexure P-11) leading to filing of the present revision petition.

6. I have heard learned counsel for the petitioner.

7. Learned counsel for the petitioner submits that the trial Court gravely erred in dismissing the application. He submits that when the first application for the appointment of local commissioner was moved by the



respondents-defendants, the petitioner-plaintiff had given his no objection to the same and, under the circumstances, there was no occasion for the trial Court to have dismissed the same. He made reference to the second application and the order passed thereupon also, as also to the present impugned order. Learned counsel submits that the only dispute between the parties is as to whether the suit property is situated within the *Lal Lakir* or is a part of Khasra No.68 and the only way to find out the same is by way of demarcation. He submits that under the circumstances, local commissioner should have been appointed by the trial Court. In support of his contentions, he has placed reliance upon a judgment of a coordinate Bench of this Court in the case of ***M/s Allwin Infrastructure Limited, Panchkula vs. M/s MAXXUS Developers and others, 2021(1) RCR (Civil) 177*** and a judgment of a Division Bench of this Court in the case of ***Harvinder Kaur vs. Godha Ram and another, 1979 AIR (Punjab and Haryana) 76***.

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

9. The suit was filed in the year 2017. It is settled that it is for the plaintiff to prove its own case by leading evidence and the Court is not expected to collect evidence on its behalf. The petitioner-plaintiff filed a suit for permanent injunction *inter alia* claiming the suit property to be a part of the *Lal Lakir*. The evidence of the petitioner-plaintiff was closed by order on 11.07.2023. The evidence of the respondents-defendants has also concluded and the case is stated to be at the final stage. The first application for the appointment of local commissioner was moved on 15.01.2024, the second was moved on 13.11.2024 and the third was moved in December 2024. The previous two applications were dismissed. When the second application was dismissed vide order dated 19.11.2024, costs of Rs.2000/- were imposed upon



the petitioner-plaintiff. The same were not paid and another application was moved for demarcation. The trial Court, while dismissing the final application held as under:-

*“7. After hearing the contentions of the learned counsel for the parties, this court is of the opinion that that the applicant/plaintiff is tried to linger on the matter with one pretext to another. The issues in this case were framed on 07.10.2021 and the plaintiff availed various opportunities including last opportunity and detailed order dated 14.07.2022 and 21.02.2023 was passed regarding the conduct of the plaintiff. The said order dated 14.07.2022 and 21.02.2023 has been reproduced as follows:-*

*Order dated 14.07.2022*

*“xxx xxx xxx”*

*Order dated 21.02.2023*

*“xxx xxx xxx”*

*It would be further important to note that earlier the respondent/defendant filed an application under Order 26 Rule 9 read with Section 151 C.P.C. for appointment of Local Commissioner which was dismissed vide order dated 22.07.2024 and the case was fixed for evidence of the defendant. Thereafter, the applicant/plaintiff in order to linger on the matter, filed an application under Order 26 Rule 9 for appointment of Local Commissioner qua the same relief which is sought in the present application. The said application was dismissed vide detailed order dated 19.11.2024 with cost of Rs.2000/- but the plaintiff inspite of paying the cost has filed the present application just to linger on the matter with one pretext to another. It would be further important to note that even the plaintiff evidence was closed by order vide order dated 11.07.2023 because the applicant/plaintiff made every efforts to linger on the matter. With one pretext to another.*

*8. It would be important to note that it is well settled law that which you cannot allow to do directly you cannot be allowed to do indirectly. In this case the applicant/plaintiff wants to seek the relief indirectly which has already declined by this Court vide order dated 19.11.2024 with cost of Rs.2000/-. Because earlier the plaintiff/applicant filed the application for appointment of Local Commissioner on the same ground which is mentioned by him in the present application. So, this act and conduct of the plaintiff clearly shows that he wants to linger on the matter with one pretext to another. So, in these circumstances, the applicant/plaintiff is required to be burdened with heavy costs. Hence, the present application is dismissed with cost of Rs.5000/- to be paid by the plaintiff to the*



*defendants. Now case stands adjourned to 11.02.2025 for rebuttal evidence if any otherwise for final arguments.”*

10. Notably, all applications were moved seeking the same relief. Firstly, once the first application was decided and the order was not challenged any further, there was no occasion to move the 2<sup>nd</sup> application. The petitioner went ahead and filed yet another application praying for the same relief. The previous two orders are not under challenge in the instant revision petition. In the considered opinion of this Court, successive applications on the same cause of action were not permissible. Further, the issue, as is projected is not only of demarcation. Many other issues are interlinked. Still, if the Court concerned feels the need, it can always appoint a revenue officer as a local commissioner.

11. Still further, it is settled law that against an order dismissing an application moved for the appointment of a local commissioner, no revision petition is generally maintainable. No special circumstance has been shown which may have led this Court to intervene.

12. I have considered the judgments, reliance upon which was placed by learned counsel for the petitioner. In the case of **Harvinder Kaur** (supra), the Division Bench held that the non-maintainability of a revision petition against an order appointing a local commissioner for the purposes of demarcation cannot be laid down as a general rule. There is no quarrel with the said proposition. However, in the present case, even on merits, as has been held in the preceding paragraphs, no interference is called for. For the same reasons, the judgment of the coordinate Bench in the case of **M/s Allwin Infrastructure Limited** (supra), wherein a similar view was taken while relying upon the judgment of the Division Bench of this Court in the case of **Harvinder Kaur** (supra), would not come to the aid of the petitioner.



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13. Consequently, 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 05, 2025**

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No