

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****127****CR-2332-2025 (O&M)****Date of decision: 14.07.2025****Vaish Education Society and others****...Petitioner(s)****Vs.****Lala Mathura Prasad Trust (Regd.) and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Raman B. Garg, Advocate with  
Mr. Mayank Garg, Advocate and  
Mr. Chirag Mahajan, Advocate  
for the petitioners.

**\*\*\*****NIDHI GUPTA, J.**

The present Revision Petition has been filed by the defendants under Article 227 of the Constitution of India praying for setting aside of the orders dated 21.10.2024 (Annexure P-1) and 10.02.2025 (Annexure P-2) passed by the learned Civil Judge (Senior Division), Charkhi Dadri, whereby Local Commissioner has been appointed.

2. At the very outset, this Court confronted the learned counsel for the petitioner that the present revision petition is not maintainable in view of the two Division Bench judgments of this Court, rendered in "*Harvinder Kaur and another vs. Godha Ram and another*", 1979 PLJ 562 and "*Pritam Singh v Sunder Lal*", 1990(2) PLR 191 as per which, it is held that an order appointing or rejecting appointment of a Local Commissioner is not revisable. The above view has been followed by this Court in "*Banarsi*



***Dass v Sunita Rani @ Sarita Rani and others***, Law Finder Doc Id # 827241.

In response, learned counsel for the petitioner refers to a judgment of this Court in "***M/s. Allwin Infrastructure Limited, Panchkula vs. M/s. MAXXUS Developers and others***", Law Finder Doc Id # 1781171 in which reference is made to the Division Bench judgment in ***Harvinder Kaur's case (supra)*** wherein, although it was held that no revision petition is maintainable against the order appointing or dismissing the application for appointment of Local Commissioner, yet, in para 8 of the said judgment, it was observed as follows:

*"8. Before parting with the judgment, it may, however, be made clear that it cannot as a general rule be laid down that in no case a revision would lie against an interlocutory order passed under any other provision of Order 26, and that it would be on the facts of each case that it will have to be found out whether the interlocutory order against which a revision is sought to be filed, has adjudicated for the purposes of the suit some right or obligation of the parties in controversy or not."*

3. It is argued that therefore it cannot be said as a general rule that a revision petition is not maintainable against the order appointing the Local Commissioner for the purposes of demarcation. Learned counsel contends that in the face of this caveat, reference may also be made to the judgment of Hon'ble Supreme Court in "***Surya Dev Rai vs. Ram Chander Rai and others***", Law Finder Doc Id # 63728; wherein the Hon'ble Supreme Court in paras 37 (4) and (9) has held as follows:-



*“(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step to exercise its supervisory jurisdiction.*

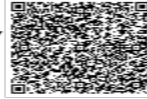
*(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”*

4. Learned counsel contends that from the above case laws, it is evident that it cannot be said as a blanket rule that no Revision is maintainable against the order appointing or dismissing the application for appointment of Local Commissioner; and that this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India is



bound to ensure that jurisdiction has not been exercised by the Courts below in a manner not permitted by law. Learned counsel contends that in the present case, by appointing Local Commissioner, the learned Courts below are assisting in collecting evidence on behalf of the respondent/plaintiff - which is not permissible as per law. It is argued that therefore the impugned orders are amenable to revisional jurisdiction. In support, learned counsel also relies upon judgments of this Court in "**Ashok Kumar Bansal vs. Parmod Ashri and others**", Law Finder Doc Id # 2086275; "**Gurcharan Singh vs. Kehar Singh (deceased) Rep. By L.Rs.**" Law Finder Doc Id # 36954; "**Charanjit Singh vs. Sikattar Singh**", Law Finder Doc Id # 28679.

5. It is accordingly prayed that the impugned orders deserve to be set aside as they are patently illegal because the Ld. Civil Judge (Senior Division), Charkhi Dadri failed to appreciate that Local Commissioner can be appointed only to assist the court in case of any doubt after parties have led their respective evidence and not to fill lacuna in case or to create/ collect evidence on part of either party or to improve the evidence of either party. It is submitted that in the present case, there is no requirement of Local Commission to demarcate the property, prepare the site plan, to take photograph and to find and report encroachment over the suit land, which is primarily obligatory on the part of the plaintiff to stand on his own legs by leading evidence. The plaintiff is required to lead his evidence to establish the encroachment as alleged, but the plaintiff cannot use the Court process to collect the evidence on his behalf so as to improve/fill up deficiency in



the demarcation report produced by him on the case file. The said report was thoroughly objected to by the petitioners by giving elaborate and specific reply on every occasion. This has been held by this Hon'ble Court in umpteen cases including the case of **Ashok Kumar Bansal supra**. Relevant para 6 of the judgment read as follows:

*"6. Furthermore, the petitioner has instituted a suit for declaration to the effect that he is joint owner and in possession of his share in the suit property along with consequential relief of permanent injunction. Therefore, it would be imperative upon the petitioner to lead evidence to prove his ownership as well as his possession over the suit property. Local commissioner, no doubt, can be appointed by a Court but only if it deems fit to elucidate any point in case of any doubt after the parties have led their respective evidence. Local commissioner can certainly not be appointed to collect evidence on behalf of the parties."*

6. Similar observations were echoed by this Court in the case of **Gurpartap Singh @ Gulpavitar Singh Vs. Jagmeet Singh 2015 (1) PLJ 691**.

The relevant para 5 of the judgment is as under: –

*"5. Thus, as per above provision, the Court has ample power to appoint local commissioner to make local investigation, which is necessary for the purpose of just decision of the case. However, the object of local investigation is not to collect the evidence on behalf of either party, but the purpose is to obtain such evidence, which from its peculiar nature, can only be had on the spot with a view to elucidate any point which is left doubtful on the evidence produced before the Court."*

7. It is accordingly prayed that the impugned orders be set aside.



8. No other argument is raised on behalf of the petitioner.

9. I have heard learned counsel for the petitioner and perused the case file in great detail. I find no merit in the submissions made on behalf of the petitioners.

10. Brief facts of the case are that the plaintiff/respondent No.1 had filed a suit dated 30.05.2017 through its trustee for declaration that the suit land is owned by the plaintiff-Trust with consequential decree of possession. It is pleaded in the plaint that plaintiff had got its land measured and demarcated through M/s. Unique Surveyors Peeragarhi, New Delhi with the help of Computerised Total Station Method in 2014 and 2015 under the supervision of Halqa Kanungo and submitted its survey/demarcation reports dated 23.6.2014 and 20.1.2015 alongwith survey plan to the Halqa Kanungo and the same were accepted and filed in the revenue records by the Tehsildar by its orders dated 25.6.2014 and 28.1.2015 respectively; and thus the plaintiff discovered that the defendant No. 1 has encroached 910 square metres/1088 square yards/9793 square feet of its aforesaid land and constructed a part of building of the defendant No. 3 over the said land.

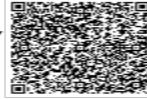
11. The petitioners/defendants No.1 to 6 had denied above said averments upon which the plaintiff had filed an application dated 18.12.2017 under Order 1 Rule 10 CPC for impleading Municipal Council Charkhi Dadri as defendant No.7. The said application was allowed by the learned trial Court vide order dated 06.10.2021 whereupon Municipal



Council, Charkhi Dadri came to be impleaded as defendant No.7/respondent No. 2 herein.

12. On 23.10.2023, issues were framed in the matter. The plaintiff moved an application dated 18.12.2023 (Annexure P-3) under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner from the Revenue Department on the ground that petitioners in the written statement had not accepted the demarcation report/survey produced by the plaintiff. The petitioners had filed reply dated 01.04.2024 (Annexure P-4) to the above said application and thereby objected the application of the plaintiff being the device to collect evidence for it. Vide impugned order dated 21.10.2024 (Annexure P-1), the said application dated 18.12.2023 (Annexure P-3) has been allowed on the ground that *“Local Commissioner is being appointed only to demarcate the suit land while acknowledging that the respondent No. 1-plaintiff has already produced demarcation report on the case file and the petitioners-defendants No. 1 to 6 raised various objections thereto; still, instead of directing the respondent No. 1-plaintiff to prove the said demarcation report by leading evidence, Ld. Trial Court appointed Halka Kanoongo as Local Commissioner with directions to visit the spot after giving notices and thereafter to demarcate the property of parties and to submit its report alongwith photograph. The Local Commissioner fee was assessed as ₹. 5000, which was ordered to be paid by the respondent No. 1-plaintiff.”*

13. Thereafter Local Commissioner/Halka Kanungo presented his report dated 09.12.2024 (Annexure P-5); to which the petitioners have filed



objections dated 20.01.2025 (Annexure P-6). Thereafter the learned trial Court passed a fresh order of demarcation on 10.02.2025 (Annexure P-2) while considering the objections of the petitioners (Annexure P-6) and thereby appointed the Tehsildar as Local Commissioner with directions to demarcate the suit property along with photographs and also report about encroachment (if any) by any party.

14. Hence, present Revision Petition.

15. It has been submitted on behalf of the petitioners that this Court in case of ***M/s. Allwin Infrastructure (supra)*** has observed/acknowledged that jurisdiction of Revisional Court cannot be held to be barred as a general rule; and has further referred to the judgment of Hon'ble Supreme Court in ***Surya Dev Rai's case (supra)*** that supervisory jurisdiction under Article 227 of the Constitution of India is to be exercised to ensure the subordinate Court has not exercised its jurisdiction in a manner not permitted by law.

16. I am not impressed by the said argument as in the judgment in ***M/s. Allwin Infrastructure (supra)*** itself, the Revision Petition filed by the plaintiff therein against the order appointing Local Commissioner on an application moved by the defendant for demarcation of the suit land, was dismissed for the following reasons: -

*"13. Order 26 Rule 9 CPC reads in the following terms:*

*"Commissions to make local investigations:- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or*



*of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.*

*14. There can be no quarrel with the settled proposition of law that no party can be permitted to seek assistance of the Court to collect favourable evidence. Be that as it may, in a case where parties being owners of adjoining land and plaintiff/petitioner alleging encroachment in the suit property, an application moved for demarcation of the land of the plaintiff as also defendants would certainly facilitate an effective and complete adjudication of the matter.”*

17. Undeniably in the present case also the property of the plaintiff and the defendants are situated adjacent to each other, and the plaintiff has alleged encroachment by the petitioners which is being denied by the petitioners. Though already demarcation report has been produced by the plaintiff said report was challenged by the petitioners, on the ground that it is not conducted in their presence and other objections were raised. Vide order dated 21.10.2024 (Annexure P1) the application was allowed on ground that since main dispute between the parties is with respect to the boundaries of their respective property it will be in the interest of justice that local investigation for purpose of elucidating boundary dispute in present suit by issuing a commission to competent Revenue Official be done. Therefore, in case the suit property is demarcated with the assistance of Local Commissioner, as observed by the Coordinate Bench in ***M/s. Allwin***



*Infrastructure (supra)*, the same “would certainly facilitate an effective complete adjudication of the matter”. Moreover, any observation of a Single Bench cannot override the law as laid down by the 2 Division Benches of this Court as noticed above. Even no prejudice will be caused to the petitioners.

18. Further, the Hon’ble Supreme Court in ***Haryana Waqf Board v. Shanti Sarup, (SC) : Law Finder Doc Id # 187552*** in similar circumstances, has recommended that such like disputes be resolved with the appointment of a Local Commissioner, and has held as follows: –

*“Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land. Admittedly, in this case, an application was filed under Order [26](#) Rule [9](#) of the Civil Procedure Code which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order [26](#) Rule [9](#) of the CPC. .... But the only controversy between the parties was regarding demarcation of the suit land because land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial court was wrongly rejected. It is also not in dispute that even before the appellate court, the appellant-Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land. In our view, this aspect of the matter was not at all gone into by the High Court while dismissing the second appeal summarily. The High Court ought to have considered whether in view of the nature of dispute and in the facts of the present case, whether the Local*



*Commissioner should be appointed for the purpose of demarcation in respect of the suit land.”*

19. Accordingly, the Hon’ble Apex Court in the above matter had remanded the case back to the High Court, for considering the aspect of appointment of Local Commissioner for resolution of the dispute which involved demarcation of land, before deciding the second appeal on merits.

20. Therefore, in view of the factual and legal position, as noticed above, the Present Civil Revision is hereby **dismissed**.

21. Pending application, if any, stands disposed of.

**14.07.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

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