



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

129

CR-7064-2025

Date of decision :01.10.2025

TARA CHAND

... PETITIONER

VERSUS

MOHAN LAL

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Nitin Jain, Advocate
for the petitioner.

PARMOD GOYAL, J. (ORAL)

1. The petitioner-defendant is aggrieved by the impugned order dated 29.08.2025 (Annexure P-7) passed by the learned Civil Judge (Senior Division), Jalandhar, whereby the application filed by the respondent-plaintiff under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure (CPC) for appointment of a Local Commissioner was allowed.

2. By way of the said order, the Halka Patwari, under the supervision of the Kanungo or Tehsildar, Jalandhar, was appointed as the Local Commissioner for the purpose of demarcation of the suit property.

3. Present proceedings have arisen from a suit for possession filed by the plaintiff-respondent, seeking possession of a portion of the suit property measuring 2 Marlas. The property, is stated to be owned by the plaintiff and is comprised in Khewat No. 85/83, Khatauni No. 96, Khasra No. 13/1/1/4(0-13), situated in village Suchi Pind, Tehsil and District Jalandhar. The property is duly enclosed and bounded as per the description given in the plaint.

4. It is the case of the plaintiff-respondents that the defendant has



encroached upon 2 Marlas of the land owned by them. From pleadings of parties following issues were framed:-

- “1. *Whether the plaintiff is entitled to possession of the suit property as prayed for? OPP*
2. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
3. *Whether the plaintiff is entitled to mesne profits as prayed for? OPP*
4. *Whether the suit of the plaintiff is knowingly false and purposely vexatious? OPD*
5. *Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from this court? OPD*
6. *Whether the suit is not maintainable? OPD*
7. *Relief.”*

5. After the completion of pleadings by the parties, vide impugned order dated 29.08.2025, the learned Court of first instance appointed Local Commissioner to ascertain the actual status and condition of the suit property. However, while appointing the Local Commissioner, it was specifically directed that the Commissioner shall only record the factual position at the site and shall not express any opinion regarding possession of the property. The Court further clarified that it would evaluate other evidence after receiving the report to determine the actual and factual position on the spot.

6. Learned counsel for the petitioner-defendant is challenging this order on two grounds. First, it is contended that the learned Court of first instance has failed to consider the previous judgment against the plaintiff, in which the plaintiff did not succeed in obtaining a permanent injunction. Secondly, reliance is placed on the affidavit of the plaintiff as well as that of the vendor of the defendant. The plaintiff’s affidavit states that he shall not claim



any property from the defendant but will seek his remedy against the vendor of the defendant.

7. Learned counsel for the petitioner has further relied upon the judgment titled *Jagmohan Vs. Ramesh Kumar @ Ramesh Chander and another*, 2013 (15) RCR (Civil) 464, wherein it was held that a Local Commissioner cannot be appointed solely for the purpose of collecting evidence. As far as the judgment relied upon by the learned counsel for the petitioner is concerned, the legal principles are not in dispute. However, whether, in a given case, the application for the appointment of a Local Commissioner is for the purpose of collecting evidence or to ascertain the actual status at the spot depends entirely upon the facts and circumstances of each case.

8. In the present case, I find that the learned Court of first instance has exercised due care in ascertaining the actual and factual position at the spot by appointing Local Commissioner. The Court specifically directed the Local Commissioner not to express any opinion regarding possession and provided clear instructions on how the Local Commissioner was to act in compliance with the impugned order dated 29.08.2025.

9. Since the present suit is for possession based on an allegation of encroachment, the demarcation of the property constitutes an important piece of evidence that assists the Court in appreciating the actual and factual position at the spot in conjunction with other evidence. Therefore, in the facts and circumstances of this case, the appointment of the Local Commissioner cannot be held to be an attempt to collect evidence, as has been suggested by the learned counsel for the petitioner.

10. In the present case, the learned Court of first instance has already granted liberty to both parties to present their respective evidence and has made



it clear that the report of the Local Commissioner shall be subject to evaluation and appreciation alongside the evidence produced by both parties. Therefore, at this stage, neither the judgment nor the affidavits relied upon by the petitioner can be considered to reach any definitive conclusion, as they are yet to be proved through evidence. The matter is still pending adjudication. Hence, the appointment of the Local Commissioner to demarcate the suit property in the present case is a simple exercise aimed at ascertaining the actual and factual position at the spot, in a case of encroachment. No interference is warranted at this stage.

11. It is reiterated that both the parties shall be at liberty to produce all possible evidence to establish and justify their respective claims of possession or encroachment over the suit property in accordance with law.

12. The petition is without merit and is, therefore, dismissed.

01.10.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No