

CR-5985-2024 (O&amp;M)

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

S.No.143

**CR-5985-2024 (O&M)****Date of decision : 01.04.2025**

Ajit Singh and others

... Petitioners

VERSUS

Charan Dass and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**Present: Mr. Malkeet Singh, Advocate,  
for the petitioners.

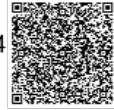
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**PANKAJ JAIN, J. (Oral)**

The defendants are in revision aggrieved of the order dated 24.09.2024 passed by Civil Judge (Senior Division), SBS Nagar whereby the application filed by the defendant seeking appointment of Local Commissioner to demarcate the land has been declined.

2. The plaintiffs filed suit claiming joint possession over the suit property as mentioned in the headnote of the plaint. The suit is being contested by the defendant petitioner by filing written statement and counter claim. As per the defendants, the suit property bears khasra numbers different from one mentioned by the plaintiffs and it is under the ownership of the defendants/counter claimant. The defendants claimed encroachment over his estate and sought relief of vacant possession in the counter claim.

3. Defendant No.2-Ajit Singh, who happens to be petitioner, also appeared in the witness box. He was cross-examined. He admitted in his testimony that the suit property claimed by the plaintiffs and the property



regarding which the counter claim has been filed are one and the same. Thereafter, the present application was moved seeking appointment of Local Commissioner to demarcate the suit land and the land subject matter of counter claim.

4. The application has been dismissed by the Trial Court holding that the process of law cannot be utilized for collecting evidence.

5. Mr. Malkeet Singh has assailed the findings recorded by the Trial Court and submits that wherever the dispute pertains to boundary of the suit property, the Court must appoint Local Commissioner to identify the suit property. He submits that Court should appointment Local Commissioner to identify the property in dispute as without identification of the property, relief claimed by the rival parties cannot be adjudicated.

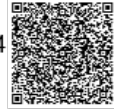
6. I have heard the learned counsel for the petitioner and have carefully gone through the record of the case.

7. In order to appreciate the plea raised by the petitioner, it will be apt to peruse Order XXVI Rule 9 of CPC which reads as under : -

**“9. 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.

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

8. Trite it is that the provisions as contained under Order XXVI Rule 9 CPC cannot be allowed to be used to martial the evidence. The defendants have raised the counter claim before the Court claiming that the



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suit property has been wrongly described by the plaintiffs in the plaint. Rather he claims encroachment upon his property by the plaintiffs. In these circumstances, this Court finds that the Lower Court rightly rejected the application filed by the petitioners seeking appointment of the Local Commissioner. The defendants having raised specific plea and based upon their having maintained counter claim is required to prove his case by leading cogent evidence instead of calling upon the Court to assist him to prove his case.

9. Finding no merit in the present revision, the same is ordered to be dismissed.

**( PANKAJ JAIN )**  
**JUDGE**

April 01, 2025  
Paritosh Kumar

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |