

CS No. 803/23
CNR No. DLSH010067292023
Arun Gupta vs. Gajender & Ors.

04.08.2026

Present : Sh. Gaurav Seth Ld. Counsel for plaintiff through VC.
Sh. Kuldeep Kumar Ld. counsels for D1 and D2 through VC.
D1 in person.
Sh. Shubham Rajhans Ld. counsel for D3 through VC.

Today, matter is listed for clarification.

Clarification sought.

Be awaited for order.

(Gaurav)
District Judge-01/ SHD
KKD/Delhi/04.08.2026

(03.45 pm)

ORDER

1. By way of the present application, the plaintiff has sought appointment of a Local Commissioner to visit the suit property bearing part of property No. 49/5, East Azad Nagar, Krishna Nagar, Delhi-110051, to measure the dimensions of the plot and submit a report as to the area over which the defendants have raised construction.

2. It is the case of the plaintiff that although the defendants obtained sanction/occupancy-completion certificate in respect of a plot

admeasuring approximately 81.75 sq. yds., they have, in fact, raised construction over an area measuring approximately 87 sq. yds. by encroaching upon public land. It is, therefore, contended that a local investigation is necessary to ascertain the actual dimensions of the plot.

3. The defendants have vehemently opposed the application, *inter alia*, contending that the same is not maintainable and that the plaintiff is seeking to collect evidence through the process of the Court. It is further contended that the municipal record, including the status reports and other relevant documents, already forms part of the record and the plaintiff is required to establish its case by leading evidence during trial.

4. I have heard learned counsel for the parties and perused the record.

5. Order XXVI Rule 9 CPC empowers the Court to appoint a Local Commissioner where a local investigation is considered necessary or proper for the purpose of elucidating any matter in dispute. The power, however, is discretionary and is required to be exercised having regard to the nature of the controversy involved and the necessity of such investigation for effective adjudication of the issues before the Court.

6. Before proceedings further, it is apposite to notice the subsequent developments in the present suit. A perusal of the order-sheet dated 03.06.2024 reveals that learned counsel for defendant no.3/MCD submitted before the Court that the defendants had raised 'chajjas' over the property which constituted deviation/extra coverage beyond the sanctioned building plan. It was further submitted that the said deviation/extra coverage had been duly booked by the competent

authority and was thereafter demolished. The order further records that, in view of the aforesaid submission, learned counsel for the plaintiff sought time to obtain appropriate instructions from the plaintiff regarding withdrawal of the suit, as according to him, the reliefs sought in the suit had substantially been satisfied.

7. Subsequently, as reflected from the order-sheet dated 08.04.2025, the plaintiff appeared through video conferencing and submitted that he intended to continue the present proceedings on the ground that his claim for damages still survived for adjudication. Consequently, the suit now survives only with respect to the plaintiff's claim for recovery of damages.

8. In the aforesaid factual backdrop, the controversy presently requiring adjudication is confined to the plaintiff's entitlement to damages, if any, allegedly suffered on account of the acts of the defendants. The questions which now fall for determination are whether the plaintiff has suffered any damage, whether such damage is attributable to the acts of the defendants, and whether the plaintiff is entitled to the quantum of damages claimed. These questions are required to be adjudicated on the basis of the evidence to be adduced by the parties.

9. The relief sought in the present application is for appointment of a Local Commissioner to measure the dimensions of the defendants' property and to ascertain the extent of construction allegedly raised thereon. In the considered opinion of this Court, such an exercise would not have any material bearing on the adjudication of the only surviving relief of damages. Even if the existing dimensions of the

property are measured at this stage, the same would neither establish that the plaintiff suffered damage to his property nor prove the extent of such damage or the liability of the defendants to compensate the plaintiff. The proposed local investigation would, therefore, not assist the Court in effectively deciding the controversy which presently survives in the suit.

10. Accordingly, the application under Order XXVI Rule 9 read with Section 151 CPC is hereby dismissed and disposed of.

11. Nothing observed herein shall be construed as an expression on the merits of the plaintiff's claim for damages, which shall be decided independently on the basis of the evidence led by the parties.

12. **List this matter for A/D of documents and framing of issues on 24.10.2026.**

(GAURAV)
DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI