



UPKU010062942025

In the Court of District Judge, Kushinagar at Padrauna
Present: Sanjeev Kumar Tyagi, H.J.S., Id. No. UP2018

Civil Revision No. 47/2025

Sahab Alam aged 40 years s/o Taimuddin,
R/O- Mauja Sumahi Bujurg Urf Mehdiya, Tappa-Haweli,
Pargana-Sidhwa Jobna, Tehsil-Tamkuhiraj, District-Kushinagar.
.....Revisionist/Defendant

Versus

1- Arun Kumar Tripathi aged 63 years s/o Late Aadyashankar
Tripathi,
2- Arvind Kumar Tripathi aged 58 years s/o Late
Aadyashankar Tripathi,
R/O- Bhaluhi Madaripatti, Tappa-Mainpur, Pargana-Sidhwa
Jobna, Tehsil-Kasia, District-Kushinagar.
.....Respondents/Plaintiffs

JUDGEMENT

1- This instant Civil Revision has been filed under
Section 115 C.P.C. against Impugned Order Dated
05.09.2025 of Original Suit No. 33/2025, Arun Kumar Tripathi
& another Vs. Sahab Alam passed by Civil Judge, (Junior
Division) Kasia, Kushinagar, whereby Ld. trial Court has
corroborated the Representation, Map, Map Report as paper
no. 16Ga to 18Ga subject to evidence.

2- Ld. Counsel for Revisionist/Defendant Shri Ajay Kumar Tiwari has argued following points :-

(I)- Impugned Order Dated 05.09.2025 is against law and facts of the case.

(II)- Ld. Trial Court has not applied his judicial mind while passing the impugned order and therefore, Impugned Order Dated 05.09.2025 is liable to be set aside.

(III)- Respondents/Plaintiffs have sought injunction regarding Aarazi No. 180, Area 0.097 Hectare but Ld. trial Court and Amin Commission has not considered the relevant and important document of Revenue i.e. Map no. 41 wherein this document has been filed as 58Ga and it has been specifically demarcated there that Khasra No. 1494 extend to boundary of Chakroad but Khasra No. 180 (disputed Khasra no.) boundary does not extend to Chakraod and therefore, Plaintiff has made a wrong map at the end of the plaint because disputed Khasra No. 180 has been extended to Chakroad while between the ends of Khasra No. 180 there is one boundary of Chakraod and there is a thin strip of land of Khasra No. 1494 and one has to jump the area of 1494 in order to reach Chakroad from Khasra No. 180. The sequence is that on one hand disputed Khasra No. is 180 is there and adjacent to it a thin strip of land of Khasra No. 1494 is there and adjacent to boundary of 1494, Chakraod is there.

(IV)- In Revenue Map no. 41, adjacent to Khasra No. 180, Khasra No. 1494 has not been mentioned. Moreover, map should have been made by Amin Commission according to 58Ga in which Khasra No. 180, strip of land of Khasra No. 1494 and Chaknali no. 1463 of village Bairiya Raja, Tappa-Mainpur, District-Kushinagar.

(V)- Ld. Amin should have made the map according to Revenue Map 41 filed as 58Ga.

(VI)- By Impugned Order Ld. trial Court has said that Amin Report is subject to evidence but till the evidence is appreciated in cross examination 6C-2 will be in favour of Respondent/Plaintiff because Plaintiff is going to assert that he needs injunction as tenure holder as his name is recorded in Khatauni in respect to Khasra No. 180, Area 0.097 Hectare situated at Bairiya Raja, Tappa-Mainpur, Pargana- Sidhwa Jobna, District-Kushinagar.

(VII)- Amin Commission has committed gross illegality in making the map as per whims and fancies and not as per Map 41 as mentioned by Revenue Authorities.

(VIII)- Ld. Revisionist has prayed to allow the revision.

3- Ld. Counsel Shri Rajiv Kumar Srivastava for Respondents/Plaintiffs has submitted following points:-

(I)- Impugned Order should not be set aside because Ld. trial Court has admitted Amin Commission Report subject to evidence.

(II)- Respondents/Plaintiffs are free to adduce evidence in their favour and get the case rejected or get 6C-2 application rejected.

(III)- Previous suits regarding disputed Property i.e. Khasra No. 180, Area 0.097 Hectare were instituted and same map is mentioned at the plaint also which is the subject matter. There is no material illegality in the Impugned Order. Impugned Order is neutral and Revisionist is not prejudiced by the Impugned Order.

(IV)- Respondent Ld. Counsel has prayed to dismiss the Revision.

(V)- Respondent Ld. Counsel has filed two Rulings mentioned as follows:-

(i)- [2005(2) JCLR 446 (All)] Allahabad High Court Bhaskara Nand Giri vs. Basant Lal & Ors.

Civil Procedure Code, 1908, Section 115, Proviso (Second)—Revision—Interference—Issue of jurisdiction— Impugned order not falls in the second proviso to Section 115—Also order impugned if allowed to stand would not cause irreparable injury to parties—Hence not warrants interference in revision— Revision dismissed.

(ii)- Civil Misc. Writ petition No. 20665 of 1990, Decided on 30th October, 1992. Ram Lakhan and other versus District Judge, Basti now Siddharth Nagar.

(E)- Civil Procedure Code, 1908 Order 26, Rule 10 (2) — Sub-rule (2) of Rule 10 of the C.P.C. treats the report of a Commissioner only as a piece of evidence.

4- I have heard both the Ld. Counsels and perused the Record.

5- On perusal of original suit, it transpires that Respondents/Plaintiffs have filed the suit against Revisionist/Defendant for injunction in respect to Aarazi No. 180, Area 0.097 Hectare, situated at Tappa- Bairiya Raja, Tappa-Mainpur, Pargana-Sidhwa Jobna, Tehsil-Kasia, District-Kushinagar. It is apparently clear that disputed property i.e. Aarazi No. 180, Area 0.097 Hectare is having borders with Chakroad while according to pertinent Revenue Map 58Ga borders of chak road are with Khasra No. 1494. Khasra No. 1494 is admittedly not in dispute.

6- From perusal of Map 18Ga filed by Court Amin Harischandra it transpires that he has almost simply copied the map mentioned by Plaintiffs at the end of the plaint without referring to 58Ga or Map 41 earmarked by Revenue Authorities. Map 41 basically is final and settlement of all Khasra numbers of village along with Chakroad, therefore, it

basically shows the correct factual legal and boundary positions of Khasra No. 180, Area 0.097 Hectare. It also transpires that Court Amin has made the map mechanically without referring to Chakbandi Revenue Map no. 41 Revenue Map 58Ga present on file is just like the torch light for better appreciation of boundaries of disputed Khasra number. Report filed by Court Amin Harischandra Dated 24.01.2025 present on file as 16Ga has been filed mechanically and report is in two consolidated parts to be appreciated. Report 16Ga mentions that he has made map of disputed property. When agricultural land has been mentioned then it was the prime duty of concerned Court Amin to compare and analyse the map mentioned by Plaintiff at the end of the plaint with the map of Revenue Authorities to enable the Court to reach a justifiable decision.

7- Ld. Court in Impugned Order mentioning that Map shall be subject to evidence is against the presumption that the map submitted by Court Amin is not final but the map submitted by Court Amin becomes absolute as far as the impact of Amin Report is concerned. it is pertinent to mention here that Impugned Judgment directly effects the Fundamental Rights of the Revisionist as far as the future decision regarding 8C-2 is to be taken. Therefore, the speculation raised by the Revisionist/Defendant is not only reasonable but also relevant to law and facts of the case.

8- One Khatauni in respect to Khasra No. 1494 has also been filed as 57Ga to 57Ga/4 and as per perusal of it Respondents/Plaintiffs do not seem to be the owner of Khasra No. 1494.

9- Map mentioned at the end of the plaint simply refers to Khasra No. 180, Area 0.097 Hectare, having disputed property A,B,C,D, but it is bereft of adjacent Khasra

number of agricultural fields as well as adjacent Khasra number of Chakroad or National Highway. It was the prime duty of Plaintiff to specifically mention the Khasra number on Eastern, Western, Northern and Southern sides which have not been written and it was also the duty of Plaintiff to mention the registered owners of agricultural fields if any because the pleadings are to be specific after all as per Order 7 Rule 3 C.P.C. Plaintiffs have filed list of documents as 10Ga which mentions Khatauni having entry of Khasra No. 180, Area 0.0970 Hectare having half share each of Arvind Kumar and Arun Kumar. On the basis of Khatauni, it transpires that Plaintiff Arun Kumar and Arvind Kumar are equal owners of Khasra No. 180 but the extent of Khasra No. 180 or demarcation or boundary of Khasra No. 180 have been accurately defined by Map No. 41 (58Ga) of Revenue Authority which has not been taken into consideration by Amin while submitting Report of disputed place. Impugned Order is silent on this point. Thus, Impugned Order is also not a speaking order. Amin Report is also bereft of basis of scale used in preparing spot inspection report.

10- These two Rulings filed by Respondents are not applicable in the present case from factual and legal points and, therefore, benefit of these rulings cannot be given to Respondents because there is material irregularity in the Impugned Order as the Court Amin Report is bereft of basic principles of law because the matter in consideration is agricultural land and the boundaries have been basically mentioned in Map no. 41 filed by Revenue Authority and Court Amin has made the map of disputed property mechanically without considering any map of Revenue Authorities though it was the torch light for Amin. Commission Report should have correctly demarcated the boundaries of disputed Khasra No. 180 and other adjacent

boundaries of Khasra No. 1494 or Chakroad which are in vicinity to each other. It is also pertinent to mention here that as per Amin Report he met parties but Report of Amin Commission 16Ga read 18Ga does not bear the signatures of Plaintiffs or Defendant. Thus, Amin Report does not have any legal and reasonable version and therefore cannot be read in evidence at all. Objection (79Ga) filed by Defendant against Amin Commission Report is reasonable and tenable eye of law.

11- Therefore, Impugned Order suffers from material irregularity.

12- Due to reasons mentioned above Impugned Order deserves to be set aside. Revision deserves to be allowed.

ORDER

13- This instant Civil Revision No. 47/2025 is hereby allowed.

14- Impugned Order Dated 05.09.2025 in Original Suit No. 33/2025, Arun Kumar Tripathi & Another Vs. Sahab Alam passed by Civil Judge, (Junior Division) Kasia, Kushinagar is set aside.

15- File be sent to trial Court for hearing on 27.04.2026.

Date:**03.04.2026**

(Sanjeev Kumar Tyagi)

District Judge

Kushinagar at Padrauna.

Judgment is Pronounced, Dated and Signed by me in Open Court, today.

Date:**03.04.2026**

(Sanjeev Kumar Tyagi)

District Judge

Kushinagar at Padrauna.