

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CR No. 85 of 2026

Date of decision: 10.08.2026.

Madhu Bala ...Petitioner.

Versus

Brahm Dass & others ...Respondents.

*Coram:****The Hon'ble Mr. Justice Romesh Verma, Judge.****Whether approved for reporting?¹*For the petitioner : Mr. Ajay Sharma, Sr. Advocate with
Mr. Atharv Sharma, Advocate.

For the respondents : Mr. Anirudh Sharma, Advocate.

Romesh Verma, Judge (Oral):

The instant petition has been filed against the order as passed by the learned Senior Civil Judge, Barsar, District Hamirpur, H.P., dated 22.05.2026, whereby the application filed by the petitioner/plaintiff for the appointment of Local Commissioner, came to be rejected.

2. The facts as emerge in the present case are that plaintiff Madhu Bala instituted a suit for permanent prohibitory injunction against the defendants, their agents, servants, family members from interfering in the suit land or raising any sort of construction, changing the nature of the suit land, comprised in Khata No. 42 min, Khatauni No. 42 min, Khasra No. 212,

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**



measuring 0.02.83 hectares situated in Tikka Suhari, Tappa and Sub-Tehsil Dhatwal, District Hamirpur, H.P. and in alternative, it was prayed that in case the defendants succeed to raise any superstructure or construction during the pendency of the suit, the suit for possession by way of demolition.

3. As per the case, as set up by the plaintiff, the defendants are the strangers to the suit land and they have got no right, title or interest over the suit land. The defendants on 19.12.2016 started interfering and digging the suit land by collecting the raw materials for construction and have threatened the plaintiff that they will raise the construction over the same forcibly. Therefore, under such circumstances, the plaintiff sought a decree for permanent prohibitory injunction and in alternative for possession from the learned trial Court.

4. The said suit came to be resisted by the defendants/respondents by filing written statement, raising preliminary objections with respect to the maintainability, locus standi, non-joinder of necessary parties, cause of action, etc. On merits, all the averments as made in the plaint have been specifically denied. It was denied that the defendants are headstrong and quarrelsome persons and they have evil eyes



over the suit land. The interference and digging over the suit land was denied. The defendants submitted that the suit as filed by the plaintiff is not maintainable, therefore, the same deserves to be dismissed.

5. During the pendency of the suit, the petitioner/plaintiff filed an application under Order 39 Rule 7 of the CPC for inspection of the spot and the learned trial Court appointed Sh. S. S. Bhanyal, Advocate, practicing in District Court, Hamirpur to visit the spot and to demarcate the suit land. Admittedly, Sh. S. S. Bhanyal, Advocate, submitted a report but as stated by the learned Senior Counsel, though it was found in the said report that the respondents have made an encroachment, however, the extent of the encroachment has not been specified or clarified in the said report. The petitioner/plaintiff in order to ascertain the extent of the encroachment which is alleged to have been made by the respondents, filed a fresh application under the provisions of Order 26 Rule 9 of the CPC for the appointment of the Local Commissioner to demarcate the suit land according to the Financial Commissioner instructions and to submit a report about the nature and extent of the encroachment made by the respondents.

6. In the application, it was stated by the plaintiff that



despite the stay order as passed by the learned trial Court, the respondents during the pendency of the suit, by violating the injunction order, forcibly and illegally constructed two tin-posh *Palli* over the suit land. Thereafter, Sh. S. S. Bhanyal, Advocate, was appointed as a Local Commissioner to visit the spot in order to ascertain the quantum of construction of *Palli* over the suit land.

7. The said application came to be resisted by the respondents. It has been stated that the plaintiff cannot be permitted to create evidence in support of her contention. It is the case of the respondents that since the allegation has been leveled by the plaintiff, therefore, the primary onus lies upon the plaintiff to lead evidence and prove the encroachment.

8. The learned trial Court vide impugned order dated 22.05.2026 dismissed the application of the petitioner on the ground that the Local Commissioner cannot be appointed to collect the evidence or to enable the party to make out a case who has otherwise failed to prove by leading evidence. The learned trial Court came to the conclusion that since the parties have already led evidence and the matter is at the stage of arguments, the appointment of Local Commissioner at such a belated stage is unwarranted.

9. Feeling dissatisfied, the plaintiff has approached



this Court by filing the instant petition, invoking the provisions of Section 115 of the CPC.

10. It is contended by the learned Senior Counsel for the petitioner that the approach as adopted by the learned trial Court is erroneous and hyper-technical. He submits that once the Local Commissioner who was appointed by the learned trial Court had placed his report on the case file, it was incumbent to ascertain the extent of the encroachment in order to adjudicate the controversy in hand properly and effectively.

He further submits that in order to do substantial justice, no prejudice would be caused to other side in case the Local Commissioner is appointed to verify the extent of the alleged encroachment.

11. On the other hand, learned counsel for the respondents has opposed the said prayer and submitted that the court will not help the plaintiff to collect evidence so as to enable her and carve out a case in her favour.

12. I have heard the learned counsel for the parties and have also gone through the case file carefully.

13. Admittedly, the learned trial Court had appointed Sh. S. S. Bhanyal, Advocate, as Local Commissioner for demarcating the suit land and he has placed on record his report. As has been submitted by the learned counsel for the



petitioner, though the report is well within the file of the learned trial Court, however, in order to verify the measurement of the encroachment, the only remedy available to the petitioner is to approach the court for appointment of a Local Commissioner. He further submits that the extent of the encroachment can only be ascertained and verified by the Local Commissioner as the said fact cannot be verified either by the plaintiff or the defendants on the spot.

14. This court is in agreement with the submissions as made by the learned counsel for the petitioner that once the report of the Local Commissioner has been placed on record, which depicts encroachment on the spot therefore, in order to ascertain the extent of the alleged encroachment and to specify the extent of the same, the application for appointment of Local Commissioner ought to have been allowed by the learned trial Court. This court is of the opinion that in case the Local Commissioner is appointed, it will help the court to adjudicate the controversy in hand effectively and properly.

15. It is well settled principle of law that by merely appointing a Local Commissioner or by placing on record the report of the said local commissioner, the case of the plaintiff cannot either be accepted or rejected. The civil suit has to be decided in conjunction with the oral as well as documentary



evidence placed on record along with the report of the Local Commissioner. Therefore, at this stage, this court is of the opinion that no prejudice would be caused to the respondents in case the Local Commissioner is appointed in order to verify and ascertain the extent of the alleged encroachment, if any, made by the respondents over the suit land.

16. Therefore, after setting aside the impugned order as passed by the learned Senior Civil Judge, Barsar, District Hamirpur, the application filed by the present petitioner is allowed and the learned trial Court is directed to appoint the Local Commissioner on the next date of hearing. The parties undertake to appear before the trial Court on **26.08.2026**.

17. Any observation made herein is meant only for adjudication of the application/petition filed for appointment of Local Commissioner, the same shall have no bearing on the merits of the case.

18. Accordingly, the petition stands disposed of along with pending applications, if any.

(Romesh Verma)
Judge

10th August, 2026.
(kck)