

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 15080/2025

Smt. Sita Devi W/o Late Sh. Purushottamdas Khetan, Aged About 85 Years, R/o B-21, Prabhu Marg, Tilak Nagar, Jaipur As Partner Of Firm M/s. Vinod Textiles, B-56, Yash Path, Prabhu Marg, Tilak Nagar, Jaipur.

----Petitioner

Versus

- 1 Firm M/s. Vinod Textiles, Through Partner Sh. Hariprasad Khetan R/o B-56, Yash Path, Prabhu Marg, Tilak Nagar, Jaipur
- 2 Sh. Hariprasad Khetan S/o Sh. Govindram Khetan, R/o B-56, Yash Path, Prabhu Marg, Tilak Nagar, Jaipur
- 3 Sh. Mahesh Khetan S/o Sh. Govindram Khetan, R/o B-56, Yash Path, Prabhu Marg, Tilak Nagar, Jaipur
- 4 Sh. Devidutt Khetan, S/o Sh. Govindram Khetan, R/o B-56, Yash Path, Prabhu Marg, Tilak Nagar, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Ankit Popli Mr. Vinay Patni Mr. Arnav Sharma
For Respondent(s)	:	Mr. MM Ranjan, Sr. Adv. with Mr. Rohan Agrawal, and Mr. Yashvardhan Tolani

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Reportable

Date of hearing and conclusion of arguments	10.04.2026
Date on which the judgment was reserved	10.04.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	22.04.2026

--	--

1. The present civil writ petition has been filed assailing the order dated 22.10.2024, passed by learned Additional District and Session Judge, No. 6, Jaipur Metropolitan-II, in Civil Suit No. 47/2020 (CIS No. 42925/2014), whereby the application filed by the petitioner under Order 26 Rule 9 of Code of Civil Procedure, 1908 (herein after referred to as 'CPC') was dismissed.
2. The brief facts giving rise to the present writ petition are that the plaintiff-petitioner filed a suit for rendition of accounts, declaration and permanent injunction contending therein that she was inducted as a partner in the respondent firm, a registered partnership firm bearing Registration No. 1615/64, and held 25% share as per records of the Registrar of Firms. It was further stated that another respondent was inducted as a partner in 1980, and as per subsequent registration records obtained in 2025, the petitioner continues to be shown as an existing partner.
- 2.1 The petitioner was repeatedly denied access to the firm's financial records, including balance sheets, accounts, and profit and loss statements, despite several requests, thereby depriving her of information relating to her alleged share in the firm's assets and profits. It was further alleged that the respondents wrongfully claimed that she had retired from the partnership on the basis of a forged retirement deed dated 01.04.1994, bearing allegedly forged signatures, which, according to a private forensic examination, were not of the petitioner.

2.2 It was also the petitioner's case that the firm owns substantial immovable properties situated at Sanganer, Jaipur, measuring approximately 5000 sq. yards and 2000 sq. yards.

2.3 During the trial, the petitioner moved an application under Order 26 Rule 9 CPC seeking appointment of a commissioner for local investigation to ascertain the nature, ownership, and valuation of the firm's movable and immovable assets, on the ground that records pertaining to title were old, incomplete, and not traceable and for proper adjudication of the dispute relating to accounts and partnership rights, are required to be acquired through commissioner. It was submitted that the application was filed after completion of the petitioner's evidence, at a stage when defendant evidence was being recorded, and was not intended to fill lacunae.

2.4 After hearing both the parties, the learned trial Court dismissed the said application vide order dated 22.10.2024.

3. Aggrieved by the same, the present writ petition has been preferred by the plaintiff-petitioner.

4. Learned counsel for the petitioner submitted that the impugned order dated 22.10.2024 passed by the learned trial Court is arbitrary, unjust, and unsustainable in law as it suffers from non-consideration of material facts on record.

4.1 Learned counsel argued that the discretion under Order 26 Rule 9 CPC, though judicial, must be exercised to advance the purpose of "elucidating" the matter in dispute, and ordinarily a commissioner ought to be appointed where it assists in effective

adjudication unless there are cogent reasons such as malafide intent or undue delay, which are absent in the present case.

4.2 He further submitted that the learned trial Court failed to appreciate that the application was necessitated due to inability to obtain old and untraceable records relating to the firm's immovable properties and accounts, and was not intended to fill lacunae in evidence but to clarify the nature, extent, and valuation of the assets of the respondent firm.

4.3 Learned counsel for the petitioner further submitted that the petitioner, an admitted partner of the respondent partnership firm since 1976 holding 25% share, has been unlawfully shown to have retired on the basis of a forged and fabricated retirement deed dated 01.04.1994, which is disputed on the ground of forged signatures and is supported by a forensic opinion.

4.4 Learned counsel for the petitioner further submitted that no statutory procedure under Sections 32 and 72 of the Indian Partnership Act, 1932 regarding public notice of retirement was ever followed, thereby strengthening the case that she continues to be a partner in the firm. It was also alleged that the respondents have failed to maintain transparency in accounts and have denied access to balance sheets, profit and loss statements, and other financial records, thereby necessitating judicial intervention for appointment of a local commissioner.

4.5 Learned counsel for the petitioner contended that there exist serious disputes regarding ownership and nature of immovable properties situated at Sanganer, Jaipur measuring approximately 5000 sq. yards and 2000 sq. yards, wherein contradictory stands

have been taken by the respondents, including claims of tenancy without production of any rent agreement or supporting documents. He submitted that admissions made in earlier proceedings and cross-examinations indicate that the firm owns or controls the said properties, thereby making local investigation essential for proper adjudication of the dispute.

4.6 Learned counsel for the petitioner also urged that the trial Court has erroneously ignored material admissions, inconsistencies in the defense, and relevant circumstances, and has wrongly concluded that the application was filed to delay proceedings. The impugned order is stated to be cryptic, non-speaking, and based on misinterpretation of law as well as facts, resulting in failure to exercise jurisdiction vested under Order 26 Rule 9 CPC. Accordingly, he prayed that the impugned order dated 22.10.2024 be quashed and set aside.

4.7 Learned counsel for the petitioner has placed reliance upon the following judgments to advance his arguments :

- (i) ***M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit, Pachama, District-Sehore & Ors. vs. Modi Transport Service; (2022) 14 SCC 345.***
- (ii) ***New Meena Sahkari Awas Samiti Ltd. Lko Thru Its President vs Additional District Judge, Ct. No. 2 Lko & Ors.; 2016: AHC-LKO:17161. {Allahabad High Court}.***
- (iii) ***Sri Shadaksharappa vs Kumari Vijaylaxmi & Ors. in W.P. No. 201274/2022 (GM-CPC) decided on 24.01.2023. {Karnataka High Court}***

(iv) ***Shanti Lal & Anr. vs Sh. Jhagannath & Ors.*** in

S.B. Civil Writ Petition no. 805/2025, decided on

14.07.2025. {Rajasthan High Court}

5. Per Contra, learned counsel for the respondents submitted that defendants-respondents has produced a copy of a notice issued by the Municipal Corporation to Sh. Sudhir Jain and Sh. Sanjay Jain, the owners of the property leased to M/s Vinod Textiles, clearly indicating that the Municipal Authorities recognize M/s Vinod Textiles as the tenant of the disputed premises. This fact directly contradicts the allegations of plaintiff that the property is of the Firm, thereby establishing that the petitioner's facts are incorrect and unfounded.

5.1 Learned counsel for the respondents further submitted that the Municipal Corporation Greater's Bill for the year 2024-2025, which clearly shows that Sh. Sudhir Kumar Jain has paid the property tax, further substantiating the ownership and tax liability in his name. Additionally, M/s Vinod Textiles has filed an application before the learned Rent Tribunal, and subsequently thereto, both Sh. Sudhir Jain and Sh. Sanjay Jain have filed their replies, and the defendants have submitted a counter-reply, demonstrating the ongoing legal proceedings and the recognition of M/s Viond Textiles as the lawful tenant of the property and not the owner of the property.

5.2 Learned counsel for the respondents submits that the petitioner is resorting to delaying tactics rather than raising genuine issues. This conduct appears to be an attempt to protract the proceedings unnecessarily.

5.3 Learned counsel for the respondents further contended that the application appears to be motivated to collect evidence on unfounded facts and false assertions, which do not warrant interference by this Hon'ble Court, especially when substantial facts and documentary evidence are available on record establishing the rightful ownership and tenancy.

5.4 Consequently, the learned counsel for the respondents prayed that the present writ petition be dismissed and the impugned order be upheld in the interest of justice.

6. Heard learned counsel for both the parties and perused the material available on record.

7. For the sake of reference, Order 26 Rule 9 CPC is reproduced hereunder:

"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. A perusal of the aforesaid provision makes it evident that a Local Commissioner may be appointed for the purpose of elucidating any matter in dispute, or for ascertaining the market

value of any property, or determining the amount of mesne profits, damages, or annual net profits. However, the expression "elucidating any matter in dispute" does not extend to the collection of evidence. The Court, while exercising powers under Order 26 Rule 9 of the Code of Civil Procedure, cannot delegate its adjudicatory function to a Local Commissioner.

9. For the sake of reference, para H of the writ petition is reproduced hereunder:-

"H. Looking to the said overall circumstances and the factual matrix, as the Petitioner-Plaintiff in order to acquire and ascertain the details/ descriptions of the movable and immovable properties including other assets and its valuation thereof, filed an application under Order 26 Rule 9 of the Code of Civil Procedure, 1908, seeking the Ld. Court's indulgence in issuing a 'commission for elucidating the matter in controversy and further analyzing the usage and nature of the lands, which formed a core issue in the entire dispute'. Copy of the application under Order 26 Rule 9 of Code of Civil Procedure, 1908 is annexed herewith and 'marked as Annexure-10.'"

10. This Court is of the firm opinion that the above assertion itself discloses the intent and purpose for the appointment of the Commissioner. A reading of the above makes it clear that the petitioner intends to obtain details of the properties of the firm. Such an intent amounts to nothing but a roving inquiry, which cannot be permitted through the appointment of a Commissioner. The fact of ownership must be proved by the parties through their own evidence. The appointment of a Commissioner cannot be

made for the purpose of collecting evidence on behalf of any party to the litigation.

11. The above observation of this court is fortified by *Rule 67 of the General Rules (Civil), 1986* which provides as under:-

"67. Particulars to be given in the order for local investigation

When issuing a commission for making a local investigation under Order XXVI, Rule 9, the court shall define the points on which the Commissioner has to report. No point which can conveniently and ought to be substantiated by the parties by evidence at the trial shall be referred to the Commissioner."

12. In a catena of decisions the Hon'ble Apex Court along with High Courts, have consistently held that the allowing or rejection of an application under Order 26 Rule 9 CPC lies within the sound judicial discretion of the Trial Court. It is incumbent upon the Trial Court to determine whether the appointment of a Commissioner is necessary in the facts and circumstances of the case. Interference with such discretion is unwarranted unless it is demonstrated that there has been a manifest failure of justice or that irreparable prejudice has been caused to the aggrieved party.

12.1 In the case of ***Padam Sen and another, Appellants Versus The State of U.P.***; 1961 AIR (SC) 218, the Hon'ble Apex Court has held that:-

"10. The defendants had no rights to these account books. They could not lay any claim to them. They applied for the seizure of these books because they apprehended that the plaintiff might make such entries in those account books which could go

against the case they were setting up in Court. The defendants request really amounted to the Court s collecting documentary evidence which the defendants considered to be in their favour at that point of time. It is no business of the Court to collect evidence for a party or even to protect the rival party from the evil consequences of making forged entries in those account books. If the plaintiff does forge entries and uses forged entries and evidence in the case, the defendants would have ample opportunity to dispute those entries and to prove them forgeries.

11. We are therefore of opinion that the Additional Munsif had no inherent power to pass the order appointing a Commissioner to seize the plaintiff s account books. The order appointing Sri Raghubir Pershad as Commissioner for this purpose was therefore an order passed without jurisdiction and was therefore a null and void order."

(Emphasis supplied)

12.2 In the case of **Ashutosh Dubey. vs Tilak Grih Nirman Sahakari Samiti Maryadit;** 2004 3 MPLJ 213, the High Court of Madhya Pradesh has observed that:-

"(5.) Apart from this the scope of Order 26 Rule 9, CPC is to ascertain the matter in dispute, market value of any property, mesne profit or damages etc. But issuing of commission for investigating the fact that which of the party is in possession of the property is beyond the scope of Order 26 Rule 9, CPC. This question has to be decided by the Court after adducing the evidence by the parties. The Court has to record findings in this regard and the aforesaid job of the Court can not be shifted to the Commissioner. In the circumstances the Trial Court

has exceeded his jurisdiction in issuing such a commission ascertaining the fact that which party is in possession of the property.

(6.) SO far as the decision of the Apex Court in the case of Surya Dev Rai v. Ram Chander Rai and Single Bench judgment in Mangilal v. Gourishankar (supra) is concerned, the facts of the aforesaid case are entirely different. The Apex Court in Surya Dev Rai v. Ram Chander Rais case (supra) considering the scope of Article 227 of the Constitution of India held in Para 38 is as under:-

"38. (3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i. e. , when a subordinate Court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and there by occasioning failure of justice. (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied :-- (i) the error is manifest and apparent on the fact of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. Considering the aforesaid, it is apparent that the order passed by the Courts below is without jurisdiction and the Court below has assumed jurisdiction which was not vested in it. Once the application under Order 26 Rule 9, CPC was rejected by the Trial Court on merits, there was no occasion for the Trial Court for re-consideration of the aforesaid application on similar facts. Apart from this, it is settled law that no such commission may be issued for collecting the evidence in the case. If the aforesaid order allowed to remain in existence it will cause serious injustice to the other side. This Court in Laxman v. Ramsingh, Civil Revision No. 18 of 1982, decided on 24-2-1982 (1992 MPWN 255) has considered similar question held:-

"the prayer for appointment of a Commissioner was made on the ground that the Commissioner would be able to see on the spot the crop which is standing on the suit lands. This according to the defendant will bring out the truth of his case as according to him it was gram crop as sown by the applicant which was standing on it. Learned Counsel for the non-applicant plaintiff had submitted that the appointment of Commissioner as being sought on certain assumptions. He had in this connection pointed out certain pleadings in that behalf. The object of local investigation is not so much to collect evidence for either of the

parties. It is within the discretion of the Court to order a local investigation or reject the prayer. The Court below has exercised that discretion by rejecting that application. In view of the circumstances, it can not be said that the Court has committed any error on jurisdiction while rejecting the application in that behalf. "

(7.) SIMILAR position is here, in this case the prayer for collecting of the evidence on spot has been sought through appointment of the commission which is beyond the scope of Order 26 Rule 9, CPC."

(Emphasis supplied)

12.3 In the case of **Mahaveer Prasad vs. The Addl. District Judge, No. 1**; 2012 Supreme (Raj) 1059, a Co-ordinate Bench of this Court, has observed that:-

"7. Order 26 Rule 9 of CPC confers a discretion in the Trial Court for appointment of a Commissioner for local inspection inter alia for elucidation of the subject matter in respect of which the dispute has arisen before the Court for adjudication. Rule 67 of the General Rules (Civil), 1986 provides that in matters where burden is on the parties to bring in evidence in the suit in support of their respective claims a Commissioner for carrying out local inspection ought not to be appointed. It is thus, evident that in the context of the aforesaid statutory provisions, the appointment of a Commissioner is for facilitating the Trial Court in the discharge of its duties of adjudicate where so warranted or dictated by the opaqueness of the subject matter of the dispute and not to facilitate bringing in of evidence at the instance of the parties before the Court. In my considered view,

the issue of the allegedly pre-existing right of way as claimed by the plaintiff was a matter dependent upon evidence both documentary and oral to be lead before the Trial Court. The plaintiff could not by way of resort to Order 26 Rule 9 of CPC circumvent his duty in law to lead evidence in support of his case. In my considered opinion the Trial Court has rightly addressed the matter before it and refused the exercise its jurisdiction under Order 26 Rule 9 of CPC. In respect of discretionary orders-as an order under Order 26 Rule 9 of CPC, the Hon'ble Supreme Court in the case of Subodh Kumar Gupta & Ors. vs. Alpana Gupta & Ors. reported in (2005) 11 SCC 578 has stated that where a Trial Court passes a reasoned discretionary order in the course of trial, such an order is not liable to be interfered with in the exercise of powers of High Court u/Article 227 of the Constitution of India."

12.4 In the case of **Vimla Sharma vs Registrar, Cooperative Societies Raj**; 1997 4 RCR(Civ) 161, a Co-ordinate Bench of this Court has observed that Rule 67 of the Manual of Civil Court Rules, 1986, which governs the issuance of a commission for local investigation under Order 26 Rule 9 CPC, mandates that the Court must clearly define the points on which the Commissioner is required to report, and further stipulates that no matter which can conveniently and ought to be proved by the parties through evidence at trial shall be referred to the Commissioner.

12.5 In the case of **Union Of India (Uoi) And Anr. vs Kripal Industries Raisingh Nagar**; AIR 1998 Raj 224, a Co-ordinate Bench of this Court has observed as under :

"17. A perusal of the provisions contained in Rules 9 and 10 and Order 26 goes to show that the trial Court is vested with the discretion to appoint Commissioner but such discretion should not be exercised where the point which is required to be referred to the Commissioner can conveniently be substantiated by the parties by evidence at the trial. Rule 67 of the General Rules (Civil) 1986, explains the scope of Order 26, Rule 9, CPC."

13. This Court is of the firm opinion that the petition filed by the plaintiff-petitioner seeking appointment of a Commissioner under Order 26 Rule 9 CPC to visit the property and determine whether the immovable property in question is owned by M/s Vinod Textiles or is rented by the firm cannot be allowed.

14. This Court finds that in the present case, the core issue before the Court involves the renditions of accounts of a firm. The ownership or tenancy of a particular property, which is a matter of fact are required to be proved through their respective evidence. The plaintiff-petitioner's application for appointment of a Commissioner to determine ownership or tenancy is not an issue to be determined by the commissioner , as the parties have the means to establish their claims through documentary evidence and testimony. The Court emphasizes that the appointment of a Commissioner solely for the purpose of determining ownership or tenancy would be an unnecessary exercise that would only cause unwarranted delay, especially given that the parties are capable of producing evidence to prove their respective claims.

15. So far as the judgments relied upon by learned counsel for the petitioner are concerned, in the case of **M.P. Rajya Tilhan**

Utpadak Sahakari Sangh Maryadit, Pachama, District Sehore & Ors. (supra), reliance has been placed on the paragraph wherein the Hon'ble Apex Court has discussed the provision enabling appointment of a Commission to facilitate the Court in arriving at a fair and just decision. This Court does not dispute that a Commission may be appointed in appropriate cases; however, the crucial issue is whether such a Commission can be appointed for the purpose of collection of evidence. In the considered opinion of this Court, the provision itself does not permit exercise of powers under Order 26 Rule 9 CPC for collection of evidence or for the purpose which is capable of being proved by the parties.

16. In the case of **New Meena Sahkari Awas Samiti Ltd., Lucknow, through its President** (supra), learned counsel for the petitioner has relied upon a paragraph dealing with the general scope of Order 26 Rule 9 CPC. The said discussion pertains to the general jurisdiction under the provision and does not extend to confer upon a Commission the power to collect evidence.

17. In the case of **Shanti Lal & Anr.** (supra), a Co-ordinate Bench of this Court affirmed the well-settled legal position that the provisions of Order 26 Rule 9 CPC cannot be invoked to collect evidence in support of a party's case, as the burden of proof lies upon the respective parties to adduce evidence at the appropriate stage and it is equally well established that the power to appoint a Local Commissioner under Order 26 Rule 9 CPC is discretionary

and must be exercised in light of the facts and circumstances of each case. In the case of **Sri Shadaksharappa** (supra), the Court laid down guiding principles for the exercise of powers under Order 26 Rule 9 and 10 CPC.

18. In light of the above, and considering that the case has already reached an advanced stage, with the evidence of the plaintiff-petitioner concluded and the defendants-respondents yet to present their case, the Court finds that the petition for appointment of a Commissioner under Order 26 Rule 9 CPC was unwarranted and was rightly dismissed.

19. Accordingly, this Court finds no ground to interfere in the impugned order in exercise of its jurisdiction under Article 227 of the Constitution of India. Hence, the present writ petition is **dismissed**.

20. Pending application(s), if any, stand disposed of.

(BIPIN GUPTA),J

Anand Tanwar/