

3. The respondent herein has claimed that he is the landlord / owner of House No.4-297 (at present House No.4-54) situated at Tanakpur Road, Haldwani and the revisionists are occupying three room, Kitchen, Latrine and Bathroom as a tenant and rent of ₹600/- per month from 15.09.2015 to September 2021 is due. The revisionist filed his written statement and disputed the relationship of landlord and tenant and contended that the property is a *nazool* property, which was given to Shri Achhan Khan on lease and after his death his wife Chhunni Begum used to collect rent from the predecessors of the revisionists; that, after death of Smt. Chhunni Begum the tenanted property is under the Municipal Board; and that, earlier the suit for eviction against the revisionist and his father was dismissed. In the evidence led before the Court, the revisionists took a stand that the property has been purchased by him from Shri Ranjeet Singh and as such he is the owner of the said property.

4. By filing the IA No.5/2025, the revisionist prays that a Commissioner be appointed by this Court to ascertain as to whether the revisionists is residing in the house owned by the respondent or is residing in a different house purchased by him from Sardar Ranjeet Singh. Objection to the said application has been filed by the respondent wherein it has been contended that the issue regarding the tenant-landlord relationship has already been decided wherein it has

been held that the respondent is a landlord and owner of the disputed property and the revisionists is the tenant in the said property.

5. Learned counsel for the respondent contends that the present application for appointment of commissioner is not maintainable, however, the learned counsel for the revisionists submits that as per Chapter 8 Rule 25 of the High Court Rules, Order 41 of the CPC shall apply in Civil Revision and further as per Order 26 Rule 9 CPC, this Court has the power to issue commission. Chapter 8 Rule 25 of the High Court Rules read as under:

*"25. Civil Revisions and Appeals from Appellate Orders.—Subject to these Rules, the procedure prescribed in Order XLI** of the Code with respect to appeals shall, so far as may be, also apply to revisions and appeals from appellate orders where such appeals are allowed under any law."*

6. Learned counsel for the respondent in reply submits that the said provision deals with the Civil Revision and Appeals from Appellate Order whereas in the present case a Civil Revision has been filed against the order passed by the Trial Court in S.C.C. Suit and as the Civil Revision is not filed against any appellate order, as such the said provision is not applicable. He further submits that even if Order 26 Rule 9 CPC is held to be applicable in the present case even then as per the said provision the Court cannot issue commission for collecting evidence and the issue which

has been decided on the basis of evidence adduced before the Trial Court cannot be reopened by way of appointment of a commission.

7. Having heard learned counsel for the parties, the Court finds force in the submission of the learned counsel for the respondent that the present application is not maintainable, however, having regard to the facts of the case, the Court is of the view that dismissing the application of the revisionist on the ground of maintainability is not desirable and the Court proceeds to decide the application of the revisionists on merits.

8. Perusal of the application filed by the revisionists for appointment of Commissioner reveals that following submissions have been made in paragraph no.2 to 4 of the application. Paragraph no.2 to 4 of the application reads as under: -

"2. That the case of the respondent herein is that the revisionists are tenant of the respondent in house no.4-297 (present no.4-54) whereas the revisionists deny the respondent to be their landlord. In this respect the specific averment has been made in para no.4 of written statement. Apart from this, the revisionist no.1 in his evidence has stated that at present the revisionists are living in a different house purchased by him from one Sardar Ranjeet Singh.

3. That since the revisionists are disputing that the house regarding which the eviction has been sought is a different house. Therefore, so as to ascertain as to whether the house under ownership of respondent and the house in which the revisionists are residing at present are same or not, a commission is necessary to be conducted.

4. That therefore in view of the above facts, it is necessary in the interest of justice that this Hon'ble Court may kindly be pleased to allow the present application and be pleased to pass an order for commission through a commissioner appointed by this Hon'ble Court for the house in question and the house in which the revisionists are residing so as to ascertain as to whether both are same house or different houses, otherwise the revisionists shall suffer irreparable loss and injury."

9. In reply to the same, an objection has been filed by the respondent wherein in paragraph no.4 and 5 of the objections, the respondent has taken the following stand:

"4. That the contents of paragraph no. 2 & 3 of the application are not admitted as stated and in reply it is submitted that the issue regarding the tenant and landlord relationship has already been decided by the learned trial court and the respondent is the landlord and owner of the property in dispute. In SCC Suit no. 20 of 2021, the learned court of 2nd Additional District Judge, Haldwani, Nainital passed the judgment and decree dated 10.05.2023 in favour of the respondent/plaintiff wherein issue no. 2 was framed and decided after examining the evidence and statements given by the witnesses and direction has been given to the revisionist to pay the rent of Rs.600/- per month from 15.09.2015 to 15.08.2021 along with simple interest of 3.5% to the respondent/plaintiff and further directed to pay Rs. 1500/- per month as compensation till the date of handing over the physical possession to the plaintiff/respondent. The revisionist raised the objection that he is not the tenant of respondent only to avoid the payment of rent as well as compensation. The revisionist has not vacated the suit property till date only to harass the respondent deliberately and intentionally while the learned trial court passed the judgment and decree in favour of the respondent and reason given by the revisionist for non-vacating the suit property is not tenable because this fact has been made clear by learned trial court in judgment and decree dated 10.05.2023.

5. That the present application is the illegal

effort of the revisionist to collect evidence and cure the lacunae of his case. The court is not meant to collect the evidence for the revisionist by issuing the commission as prayed by the revisionist."

10. The question, which arises for consideration before the Court, is that, as to whether application filed by the revisionists can be considered and allowed as per the provisions of Order 26 Rule 9 of the CPC. For ready-reference the provisions of Order 26 Rule 9 of the CPC is extracted as hereunder:

"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."

11. A plain reading of the said provision would clarify that the authority of the Court cannot be utilized for the purpose of gathering or collecting evidence by either party in any proceeding. Only when the Court feels some doubt about any material before it and it requires clarification or elucidation then only a Commissioner has to be appointed.

12. The term elucidate means to make lucid or clear, throw light upon, explain and enlighten. However, the object of the local investigation is not to collect evidence and the said power is discretionary and can be exercised depending on the facts of each case. The Court has to look as to

whether the said application has been filed at the belated stage after closure of the evidence. In the present case, the revisionist in his written statement has taken a plea that the property was a nazool property and rent was paid to Achhan Khan and then to his wife Chhunni Begum and after the death of Chhunni Begum the tenanted property is under the Municipal Board. Later on in the evidence, the revisionists have stated that the property was purchased by him from Ranjeet Singh.

13. The learned Trial Court framed the following issues:

1. क्या प्रस्तुत वाद के रेस-जुडिकाटा के सिद्धान्त से बाधित है?
2. क्या वादी व प्रतिवादीगण के मध्य भवन स्वामी व किरायेदार के सम्बन्ध स्थापित चले आ रहे हैं, जैसा कि वादी द्वारा कहा गया है? यदि हों तो प्रभाव?
3. क्या प्रतिवादीगण प्रश्नगत सम्पत्ति पर 600/- रुपया प्रतिमाह की दर से किरायेदार आबाद चले आते हैं?
4. क्या प्रतिवादी द्वारा वादी के लैण्डलॉर्ड के स्वत्व होने से इन्कार किया गया है जिससे भी वह प्रश्नगत सम्पत्ति से बेदखल होने योग्य है?
5. क्या प्रतिवादी द्वारा वादी को दिनांक 15.09.2015 से सितम्बर 2021 तक का किराया अदा नहीं किया गया, जिस कारण वह प्रश्नगत सम्पत्ति से बेदखल होने योग्य है।
6. क्या नोटिस दिनांकित 02.09.2021 की प्राप्ति के एक माह के उपरान्त प्रतिवादी प्रश्नगत सम्पत्ति से बेदखल होने योग्य है।
7. अनुतोष?

14. The learned Trial Court on the basis of the material available on record and the evidence adduced concluded that there exists relationship of landlord-tenant between the parties and the revisionist is a tenant on the subject property and is liable to pay rent @₹600 per month. The finding recorded at para no.49 of the impugned order is relevant which reads as under:

"49. ऐसे में विस्तृत चर्चा के आधार पर यह पूर्णतः सिद्ध होता है कि प्रश्नगत वाद में रेस-जुडिकाटा के सिद्धान्त लागू नहीं होते हैं तथा इस वाद के वादी व

प्रतिवादीगण के मध्य मकान मालिक ए लैण्डलॉर्ड व किरायेदार के सम्बन्ध स्थापित चले आते हैं तथा यह भी साबित तथ्य है कि प्रतिवादीगण प्रश्नगत सम्पत्ति पर 600/- रूपया प्रतिमाह की दर से किरायेदार आबाद चले आते हैं। अतः विचारणीय बिन्दु सं.1, 2 व 3 वादी के पक्ष में तथा प्रतिवादीगण के विरुद्ध निस्तारित किये जाते हैं।”

15. The revisionist put a challenge to the said order and the revisionist has made the following averments in paragraph no.8 to 12 of the present revision, which reads as under:

“8. That the respondent even after vacating his house by the revisionists filed a suit for eviction, damages and rent against the revisionists in the Court of Judge, Small Causes bearing S.C.C. Suit No. 20 of 2021 (Nazakat Ali Khan Vis Hirdesh Sharma and another), claiming the revisionists to be his tenants in building no. 4-297 present no. 4-54. A true copy of the plaint of suit is being filed herewith and marked as ANNEXURE NO.-2 to this affidavit.

9. That the revisionists/defendants filed their written statement denying all the plaint averments and in additional statements elaborated that the suit property is not the property of the plaintiff. A true and typed copy of the written statement is being filed herewith and marked as ANNEXURE NO.-3 to this affidavit.

19 That the plaintiff/respondent herein filed his evidence and thereafter, the revisionists also produced evidence in favour of the revisionists. The revisionist no. 1 in his oral evidence specifically stated that the revisionists are not the tenants of the plaintiff and are residing in a building adjacent to the building of the plaintiff, which they have purchased from one Ranjeet Singh. True and typed copy of the oral evidence of revisionist no. 1 is being filed herewith and marked as ANNEXURE NO.-4 to this affidavit.

11. That apart from oral evidence the revisionists also produced one official of from Nagar Nigam, Haldwani namely; Jayant Kumar who in his statement has specifically stated that house no. 4-733, there is no mention in the municipal records that it has any tenant. True and typed copy of the

statement of Jayant Kumar is being filed herewith and marked as ANNEXURE NO.-5 to this affidavit.

12. That after the evidence was concluded and the arguments were over the Learned Judge Small Cause Court/2nd Additional District Judge, Haldwani decreed the suit of the plaintiff/respondent herein by directing the revisionists to vacate the suit premise within one month and to pay rent @ 600/- per month from 15/9/2018 till 15/8/2021 alongwith 3.5% simple interest. It is also directed that damages @ 1500/- per month be also paid to the plaintiff /respondent herein till the handing over of possession of the suit property."

16. Thus the revisionist admits that after the closure of evidence the suit was decided by the learned Trial Court. The said finding of the learned Trial Court has been put to challenge by the revisionists and the same is yet to be adjudicated by the Court.

17. In view of the above discussion, the Court finds that the present application for appointment of Commissioner is misconceived at this belated stage after conclusion of evidence and the Court does not deem it fit to exercise its discretionary power for appointment of Commissioner. Accordingly, the Application No.5/2025 is dismissed.

18. List this case on 27.02.2026 for hearing.

SUBHASH UPADHYAY, J.

Dt: 13.02.2026

Sukhbant