

Himachal Pradesh High Court**Dhani Ram @ Dhanu vs Bandi Devi on 5 September, 2025**

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.
 CMPMO No. 68 of 2021.
 Decided on: 05.09.2025

		Dhani Ram @ Dhanu.	
	 petitioner	
Versus		Bandi Devi.	
	respondent	
		Coram: Hon'ble	
Mr. Justice Bipin Chander Negi, Judge	Whether approved for reporting? 1		
For the petitioner	:	Mr.	
Hoshiar Singh Rangra,		Advocate.	For the
respondent	:		Ms. Seema
Kaushal Guleria,		Advocate.	
		Bipin Chander	
Negi, Judge (oral)			

The present petition has been preferred against the impugned order dated 06.03.2021 passed by the learned Civil Judge Karsog, District Mandi, H.P., whereby an application filed under Order 26 Rule 9, CPC by the present petitioner/plaintiff, has been dismissed.

2. Heard counsel for the parties.

3. Perused the impugned order and the documents appended along with the present petition.

4. The plaintiff/petitioner in the case at hand has filed a suit for permanent prohibitory injunction and mandatory injunction. In the suit so filed, the permanent prohibitory injunction Whether the reporters of the local papers may be allowed to see the judgment?

has been prayed to restrain the respondent from raising construction upon the suit land. The prayer in suit for mandatory injunction is for demolition of any construction raised upon the .

suit land during the pendency of the suit.

5. Admittedly in the case at hand, both the parties have concluded recording of their evidence. In the aforesaid facts and attending circumstances with a view to ascertaining the spot position, an application under Order 26 Rule 9, CPC read with Section 151 CPC has been filed.

6. The respondent r has categorically denied encroachment upon the suit land. In response to the application filed under Order 26 Rule 9 CPC, it is categorically submitted by the respondent that a demarcation was conducted on 11.08.2006.

No encroachment was found upon the suit land. The boundary wall is stated to have been constructed by the respondent on her land. Encroachment upon the suit land is categorically denied.

7. In the aforesaid facts and attending circumstances, the trial Court though properly comprehended the purpose of Order 26 Rule 9, CPC, i.e., local investigation required for the purpose of elucidating any matter in dispute. However, dismissed the application under Order 26 Rule 9 CPC on the ground that in the suit a prayer for possession had not been made by the present petitioner/plaintiff and that in the application filed seeking appointment of Local Commissioner, a proper prayer had not been made.

8. The grounds for rejection are fallacious. On a .

comprehensive reading of the application under Order 26 Rule 9 CPC, the purpose for which it has been filed can be comprehended. Non consideration of the application on account to the prayer made therein is a hyper-technical view and the same is contrary to substantive justice. Similarly non-seeking of a prayer for possession in the main suit cannot form the basis for disallowing the application. The rejection of the application is on highly irrelevant grounds.

9. In my considered view, the aforesaid disputed question of fact (alleged encroachment) can be adjudicated upon by the Court after framing of issues and recording of evidence of the parties. For such purpose, assistance of the Commissioner is neither necessary nor justified. The object of Order 26 Rule 9 CPC is not to assist a party to collect evidence where it can get the evidence itself. The object is to elucidate any matter in dispute by local investigation at the Spot. Where the Court is satisfied on materials available on record that a party is not able to produce the desired evidence for reasonable circumstances only in such a situation, the Court may assist the party to appoint a Commissioner to get the evidence.

10. In view of the aforesaid, impugned order dated 06.03.2024 is quashed and set aside. Parties are relegated to the trial Court. The application preferred under Order 26 Rule 9 for .

appointment of Local Commissioner by the present petitioner shall be considered by the trial Court in light of the evidence led by both the parties and, if the trial Court is of the view that in order to elucidate any matter in dispute by local investigation at the spot, materials available on record are not sufficient and that the present petitioner was unable to produce the desired evidence for reasonable circumstances, it is only then that the Local Commissioner would be appointed, in the case at hand to enable the petitioner to get the evidence. Pending miscellaneous application(s), if any, shall also stand disposed of. Parties are directed to appear before the trial Court on 25th September, 2025.

(Bipin Chander Negi) Judge September 5, 2025 Susheel

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