

Date of Order	Revision/TA/6533/2006/Barmer. Ranchhod Bharti Vs. Anandaram & ors.	
30.11.2018	<p style="text-align: center;">S.B.</p> <p style="text-align: center;">Shri Rajinder Kumar, Member</p> <p>Argued by:-</p> <p>Shri V.P. Singh, counsel for the Revisionist.</p> <p>S/Sh. Madanlal Gurjar and Yogendra Singh, Counsels for the Respondents.</p> <p style="text-align: center;">****</p> <p style="text-align: center;"><u>J U D G M E N T</u></p> <ol style="list-style-type: none">1. This order shall dispose of the revision petition filed on behalf of the revisionist/defendant impugning the order dated 20-06-2006, whereby application filed by him for the appointment of local Commissioner was dismissed by the trial court.2. I have heard learned counsels.3. On behalf of the revisionist/defendant, it was urged that the revisionist/defendant is in continuous physical occupation of the disputed land since long as its khatedar. In the suit filed by the respondent no. 1 and 2, the revisionist/defendant submitted an application for the appointment of Local Commissioner to bring on record the existing position. The learned trial court, however, dismissed the said application without speaking order. The learned trial court merely quoted the argument of learned counsel for the respondents that the agency of the court cannot be used to collect the evidence. The reasoning of the learned	

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	<p>first appellate court is perverse and if the same is allowed to stand, it would make the provisions regarding local inspection provided in Order 18 Rule 8, Order 26 Rule 9 and Order 39 Rule 7 CPC otiose. There are a catena of decisions of the Hon'ble Rajasthan High Court and the Board of Revenue for Rajasthan holding that the actual position of the site can be brought on record only through inspection by the local Commissioner. He has also argued that the report of local Commissioner would enable the learned trial court to arrive at a just conclusion and to effectively decide the real controversy between the parties. No prejudice would be caused to the respondent/plaintiffs in case the local inspection is done by Commissioner. Therefore, a request was made to accept the revision petition and to direct the trial court to appoint a local Commissioner for the purpose of site inspection and to submit report of the position existing on the spot.</p> <p>4. Learned counsels for the respondents opposed the above submissions. According to them, the impugned order is well considered and logical. Therefore, a request was made to dismiss the petition.</p> <p>5. Having considered the rival submissions and after perusal of record, it is revealed that revisionist/defendant moved an application in the trial court for appointment of local Commissioner.</p>	

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	<p>Though he sought the relief under the pre-text of noting down the physical features of the disputed land, indirectly he had sought to find out the factum of possession. As the material issue in the present case relates to the nature of possession and lawful right of the parties over the suit land, the same cannot be decided by inviting report of local Commissioner. No Commissioner should be appointed to prove the case of the parties since the parties should prove their own case by letting in legally acceptable oral and documentary evidence. Therefore, the learned trial court committed no illegality in rejecting the application.</p> <p>6. Resultantly, this revision petition is dismissed.</p> <p>Pronounced.</p> <p style="text-align: center;">(Rajinder Kumar) Member</p>	