

# **COMMISSION & SURVEY COMMISSION**

*(Sec. 75 r/w Oder 26, rules 9 & 10 CPC)*

**S.S. Upadhyay**

*Former District & Sessions Judge/*

*Former Addl. Director (Training)*

*Institute of Judicial Training & Research, UP, Lucknow.*

*Member, Governing Body,*

*Chandigarh Judicial Academy, Chandigarh.*

*Former Legal Advisor to Governor*

*Raj Bhawan, Uttar Pradesh, Lucknow*

*Mobile : 9453048988*

*E-mail : ssupadhyay28@gmail.com*

*Website: lawhelpline.in*

**1. Duty of court while issuing commission(Rule 68 GR Civil)---**(A) Rule 68 of GR Civil provides that when issuing a commission for making a local investigation u/o 26, Rule 9 CPC 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.

**(B) Court to define points for the report of Commissioner---** Rule 68 of GR Civil provides that when issuing a commission for making a local investigation u/o 26, Rule 9 CPC 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.

**(C) Issuing commission is discretionary & not right of party---** Issuing Commission u/o 26 rule 9 CPC for local investigation is in the discretion of the court. No party to the suit can claim as a right to get a commission issued. But the discretion has to be exercised judiciously. See---**Dr.K.C. Tandon Vs. IXADJ Kanpur-Nagar, 1998(33) ALR 267 (All)**

**(D) Matters to be proved by parties not to be referred to commissioner---** Rule 68 of GR Civil provides that when issuing a commission for making a local investigation u/o 26, Rule 9 CPC 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.

(E) **Stage of issuing commission**---C.L.No. 22/VIII-h-13 dated 18.3.1949 provides that immediately after the issues have been struck the presiding officer should consider, may be on an application by a party, if the preparation of a site plan or enquiry after local inspection at the spot is necessary for the proper decision of the case. The commission should, as far as possible, be issued on that very day with clear and detailed directions to be recorded in the Judge's notes, as to what the Commissioner is required to show in the plan and on what points he is required to make a specific report.

(F) **Use of Commissioner's report**--- Trial court can appoint a Commissioner u/o. 26, rule 9 CPC but ultimately finding have to be recorded by the trial court itself. Report of Commissioner can only be an aid u/o. 26, rule 10 CPC to the trial court in arriving at its findings. See--- **Praga Tools Corporation Ltd. vs. Mahboobunnissa Begum, (2001) 6 SCC 238**

2. **Admissibility of Commissioner's report as evidence**--- Report of Commissioner is admissible as evidence u/o. 26, rule 10(2) CPC even as substantive evidence without examination of Commissioner. See--- **Harbhajan Singh vs. Smt. Shakuntala Devi Sharma, AIR 1976 Delhi 175 (Delhi)**

3. **Commissioner's report to be substantive evidence**--- Commissioner's report is admissible as substantive evidence u/o. 26, rule 10(2) CPC even without examination of Commissioner. See--- **Harbhajan Singh vs. Smt. Shakuntala Devi Sharma, AIR 1976 Delhi 175 (Delhi)**

4. **Examination of Commissioner as witness**--- According to Or. 26, rule 10(2) CPC the Commissioner's report is part of evidence in the case. Commissioner need not be examined as a witness for proving his report. See---

1. **State of U.P. vs. Smt. Ram Sri, AIR 1976 All 121 (D.B.)**

2. **Haji Kutubuddin vs. Allah Banda, AIR 1973 All 235**

5. **Value of Commissioner's report after his examination as witness---**

(A) Even if Commissioner was examined as a witness, the court has discretion to take or not to take into consideration the report of the commissioner in respect of a disputed fact after considering the objections against it. See--- **Haji Kutubuddin vs. Allah Banda, AIR 1973 All 235**

(B) **Lawyer executing commission acts like court ---** Lawyer executing commission acts like court. Allegations made by biased litigants not to be taken notice of unless supported by affidavit or evidence. See---**1963 RD 119 (All)**

(C) **Objections against commissioner report not to be taken notice of unless supported by affidavit or evidence---** Lawyer executing commission acts like court. Allegations made by biased litigants not to be taken notice of unless supported by affidavit or evidence. See---**1963 RD 119 (All)**

6. **Necessity of disposal of Commissioner's report---** Authority is bound to consider and decide objections against Commissioners' report before relying on his report u/o. 26, rule 10(2) CPC. See--- **Harbhajan Singh vs. Smt. Shakuntala Devi Sharma, AIR 1976 Delhi 175 (Delhi)**

7. **Survey commission & identity of property---**(A) where a suit for declaration and possession of rights in the disputed land was decreed and the decree was upheld without properly identifying the disputed property by survey of commissioner, it has been held that when serious dispute of identifying the land was involved, upholding the decree without properly identifying the disputed land by survey of commissioner was not proper. See--- **Shreepat vs. Rajendra Prasad, 2000 (40) ALR 534 (SC)**

(B) **Survey of adjoining plots not necessary when property identifiable by boundaries---** Where in a suit for mandatory injunction seeking demolition of construction on suit property, the commissioner had identified the suit property with reference to its boundaries, it has been held by the Supreme Court that the commissioner's report u/o 26 rule 9 & 10 CPC cannot be discarded on the ground that

survey of adjoining plots was necessary. Even if there was any discrepancy normally the boundaries should prevail and survey would not be necessary. See---**Subhaga Vs. Shobha, 2006 (6) ALJ 235(SC)**

**(C) Options of court in the event of conflict between boundaries & area** : Where in a suit for mandatory injunction seeking demolition of construction on suit property, the commissioner had identified the suit property with reference to its boundaries, it has been held by the Supreme Court that the commissioner's report u/o 26 rule 9 & 10 CPC cannot be discarded on the ground that survey of adjoining plots was necessary. Even if there was any discrepancy normally the boundaries should prevail and survey would not be necessary. See---**Subhaga Vs. Shobha, 2006(6) ALJ 235(SC)**

**(D) Survey when not necessary?** : Where in a suit for mandatory injunction seeking demolition of construction on suit property, the commissioner had identified the suit property with reference to its boundaries, it has been held by the Supreme Court that the commissioner's report u/o 26 rule 9 & 10 CPC cannot be discarded on the ground that survey of adjoining plots was necessary. Even if there was any discrepancy normally the boundaries should prevail and survey would not be necessary. See---**Subhaga Vs. Shobha, 2006(6)ALJ 235(SC)**

**(E) Qualified Engineer can be engaged for survey work(C.L.No.58/2007 dated 13.12.2007)** :The C.L. No.58/2007 Admin (D): dated 13.12.2007 provides that in more complicated cases involving survey work the same should be performed by Qualified Engineers who can be engaged by the party concerned if adequate fees is provided for the same.

**(F) Relevant rules & C.L.s for survey commissions** : Certain relevant rules & Circular Letters regarding survey commissions are as under....

- (i) Rule 66, GR Civil
- (ii) C.L. No. 52 dated 5.5.1972
- (iii)C.L.No. 58/2007 dated 13.12.2007

**8. Report of the Commissioner to be decided by the trial court alone** : If the dispute is with regard to the acceptability of the Commissioner's report, it would be

open to the parties to substantiate their respective contentions before the trial court regarding tenability or untenability of commissioner's report and its conclusions. See--  
- **Rajinder & Co. vs. Union of India, (2000) 6 SCC 506**

**9. Commissioner's report when to be rejected** : when the commissioner's report has serious discrepancies in it, court should reject such report. A seriously defective report of Commissioner cannot be accepted as evidence u/o. 26, rule 10 CPC. See---  
**Gopal Behera vs. Loknath Sahu, AIR 1991 Orissa 6**

**10. Survey Commissioner's report not conclusive even when confirmed** : On being confirmed, the report of a Survey Commissioner can be read as evidence in the case, but that does not mean that any opinions expressed therein by the Survey Commissioner are conclusive and binding on the court. The report has to be examined in the light of the other evidence and the other evidence judged in the light of the report and the Court has to arrive at its findings on the basis of the entire evidence on the record in the light of the pleadings of the parties on the issues that arise for decision in the case. The Survey Commissioner's report 'good, bad or indifferent' is not to be taken as binding on the Court issuing the commission once it is confined and admitted in evidence. See--- **Chandrapal vs. Roop Rama, 1979 All. L.J. 55 (All)**

**11. Recording of Evidence by Commissioner & procedure therefor** : Complete procedure for evidence on commission u/o 26 rule 4 & 4-A CPC has been elaborated by the supreme court. See---**Salem Advocates Bar Association Vs. Union of India, (2005) 6 SCC 344 (Three-judge Bench)**

**12. Certified copy of commissioners report admissible in evidence** : Commissioners report once admitted in evidence in a suit, a certified copy of it would be admissible in evidence u/s 90-A of the Evidence Act. See---**1980 ACJ 72(All)**

**13. Issuing fresh commission after rejecting erroneous report of commissioner held proper**: Where the commissioner's report was found to be erroneous and

contrary to the instructions of the court, the Supreme Court held that the court should have issued a fresh commission. See: **Ram Lal Vs. Salig Ram, AIR 2019 SC 729.**

**14. Revision not to lie against order refusing issue of commission**---Revision u/s 115CPC against rejection of an application for issue of commission is not maintainable. See---**Ram Ishwar Vs. Laxmi Narain, 2007 (66)ALR 195 (All.)**

\* \* \* \* \*