

Commission & Survey Commission

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

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1. **Court to define points for the report of Commissioner:** Rule 68 of the General Rules (Civil) provides that when issuing a commission for making a local investigation u/o 26, Rule 9 CPC, 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.
2. **Issuing commission is discretionary and 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)
3. **Matters to be proved by parties not to be referred to commissioner:** Rule 68 of the General Rules (Civil) provides that no point which can conveniently and ought to be substantiated by the parties by evidence at the trial shall be referred to the Commissioner.

4. **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.
5. **Use of Commissioner's report:** Trial court can appoint a Commissioner u/o 26, rule 9 CPC but ultimately findings 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
6. **Commissioner's report is admissible in evidence even without examining him in court:** Report of Commissioner is admissible as evidence u/o 26, rule 10(2) CPC as substantive evidence even without examining him in the court. See: Harbhajan Singh vs. Smt. Shakuntala Devi Sharma, AIR 1976 Delhi 175
7. **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

8. **Examination of Commissioner as witness:** According to Order 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:
- (i) State of U.P. vs. Smt. Ram Sri, AIR 1976 All 121 (DB)
 - (ii) Haji Kutubuddin vs. Allah Banda, AIR 1973 All 235
9. **Court not bound to rely on Commissioner's report even after his examination as witness in court:** 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
10. **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)
11. **Objections against commissioner's 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)
12. **Necessity of disposal of Commissioner's report:** Authority is bound to consider and decide objections against Commissioner's 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

- 13. Survey commission and identity of property:** 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)
- 14. 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, rules 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) 15
- 15. 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)

- 16. In the event of conflict between boundaries & area, boundaries would prevail over 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, rules 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)
- 17. 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 confirmed and admitted in evidence. See: Chandrapal vs. Roop Rama, 1979 All LJ 55 (All)
- 18. Qualified Engineer can be engaged for survey work (C.L. No.58/2007 dated 13.12.2007) :**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.

- 19. Relevant Rules and C.L.s for survey commissions :** Certain Rules and Circular Letters in Uttar Pradesh regarding survey commissions are as under:
 - (i) Rule 66, G.R. (Civil)
 - (ii) C.L. No. 52 dated 5.5.1972
 - (iii) C.L. No. 58/2007 dated 13.12.2007

- 20. Commissioner's report 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

- 21. Commissioner's report when to be rejected?** When the commissioner's report has serious discrepancies into 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

- 22. Recording of evidence by Commissioner & procedure therefor :** In the case noted below, a complete procedure for evidence on commission u/o 26, rules 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)

- 23. Certified copy of commissioner's report admissible in evidence:**
Commissioner's 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)
- 24. 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.
- 25. 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)

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