



WHAT IS THE VALUE OF REPORT OF LOCAL COMMISSION

- ORDER 39 R 1 AND 2
- EVIDENTIARY VALUE OF THE REPORT OF LOCAL COMM



RESEARCH CENTRE, HIGH COURT OF BALOCHISTAN

COURT: MR. JUSTICE HON'BLE ROZI KHAN BARECH.

SUBJECT: SUIT FOR POSSESSION, DECLARATION AND PERMANENT INJUNCTION

DATE: 18TH OF DECEMBER 2024.

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QUERRY:- WHAT IS THE VALUE OF THE REPORT OF THE LOCAL COMMISSION WHILE DECIDING APPLICATION UNDER ORDER 39 RULE 1 AND 2?

KEYWORDS: status quo, prima facie, demarcation

In response to the above query, it is submitted as follows:-

In civil disputes, temporary reliefs are an essential legal mechanism to protect the rights of the litigants and to maintain the status quo during the pendency of the suit to secure the ends of the justice. The injunctions are supplemental proceedings, hence the word “may” has been used in both section 52 and order 39 rule 1 and 2 which depict that this relief is discretionary in nature whereas the appointment of the local commission is an incidental proceeding that ensures to provide temporary relief while reaching to the final and just conclusion of a case. Whether the plaintiff has a prima facie case or not, On which party the balance of convenience or inconvenience lies and whether the loss incurred is reparable or not. Hence the court has to consider all the aspects of the case during the trial to not disproportionately harm one party. Civil courts are empowered under Section 75 and Order XXVI of the CPC to appoint a local commission to ascertain facts on-site regarding the subject matter of a dispute. This power can be exercised to ensure a just decision in civil cases.

The legal framework under the procedural law:

Section 75. Power of court to issue commission.- Subject to such conditions and limitations as may be prescribed the Court may issue a commission,---

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

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 or 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 [Provincial Government] has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Procedure of Commissioner.- (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

(2) Report and depositions to be.- The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Temporary injunctions:

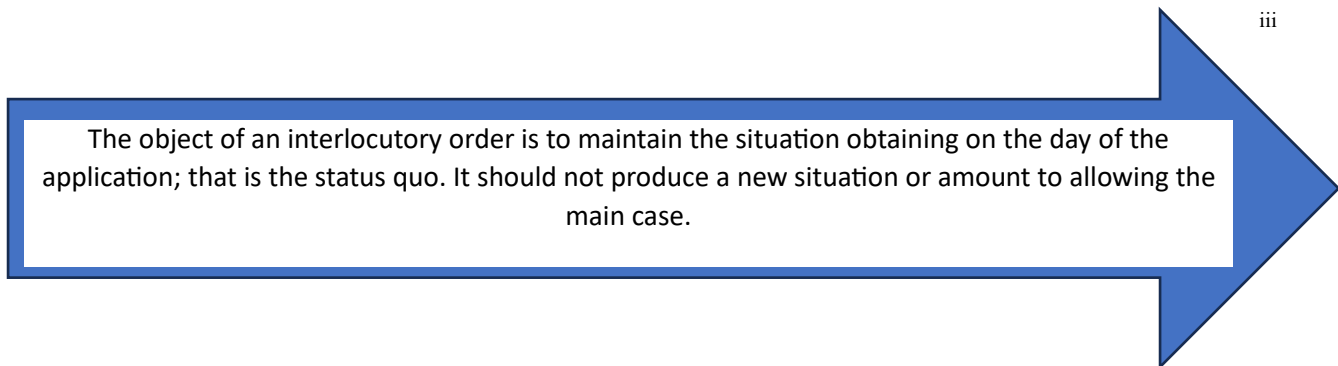
Order 39 rule 1 & 2:

- Rule 1 court may grant injunctions where a suit in property is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- That the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors.

The relief of temporary injunction is an equitable relief and therefore discretionary. Hence section 52 of the SRA 1877 and order 39 rule 1 & 2, express the same intention by using the word (may). As the discretion is to be exercised by the court it is a judicial discretion hence be exercised in accordance with reason and sound judicial principles.ⁱ As it is judicially guided by law it must be governed by rule and not by humour, it must not be arbitrary and fanciful but legal and regular.ⁱⁱ It has long been settled that the discretion is not absolute, that is, it is not unfettered and unrestrained, and in its exercise court must be guided by specific principles which are;

- I. That the plaintiff has a prima facie good case.
- II. That balance inconvenience lies in favour of the grant of injunction, and
- III. That the plaintiff would suffer an irreparable loss if the injunction is refused.

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The object of an interlocutory order is to maintain the situation obtaining on the day of the application; that is the status quo. It should not produce a new situation or amount to allowing the main case.

Analysis and Case Laws:

However, there are different views regarding the value of the report of the local commission while deciding the application under order 39 rule 1&2 depending upon the facts and circumstances of each case. This inconsistent view is due to the nature of both orders one is supplemental and the other is incidental. But the main intention of the legislature in both orders is to provide prompt relief and fair justice. Whether or not there exists a prima facie case while granting relief and whether the report submitted by the commission is reliable or not.

ⁱ University of Dacca v. Zakir Ahmed –PLD 1965 SC 311.

ⁱⁱ Lord Mansfield in R v . Wilkes—(1779) 4 Burr. Rep. 2527,2539

ⁱⁱⁱ Pakistan v Zaman 1997 SCMR 1508, 1513

1996 CLC pg# 507

While granting interim relief court is not bound to positive findings in favour of either party while question before it related to the grant of interim relief. The party seeking out interim relief was required to make a prima facie case, which in turn would mean an arguable case and not an indefeasible case.

Evidentiary value of the report of the local commission:

The commission doesn't perform judicial functions as its scope and extent are limited. **PLD 2011 Lah 207.**

2007 CLC 1661:

It is not binding upon the court to consider it and could not be formed the basis of relief.

The credibility of report of local commission:

The report of the local commission is subject to objections and hence is not credible at all.

Powers of Local Commission:

The local commission has no power to determine the right/share of any party. **2023 CLC 1875.**

Scope

The report of the local commission carries very narrow and limited functions. **2022 CLC 845.**
PLD 2021 Balochistan 206.

The report of the local commission is not conclusive and is always subject to the objection of the parties, and the court is not bound to straight away accept/reject the same, but the court would evaluate the objection of the parties. even if the report is accepted, it will not amount to evidence, but to help the court in reaching a conclusion.

Grant of interim injunction and report of local commission:

2021 YLR 446:

Scope-

The case was remanded to the Trial Court with direction by the High Court to dispose of the application under O.XXVI, R.9, C.P.C., on top priority basis and thereafter, dispose of the application under O.XXXIX, Rr. 1 & 2, C.P.C., after hearing arguments of both the parties on merits within shortest possible time---Parties, in the meanwhile, were directed to maintain status quo---Revision petition was disposed of accordingly.

2023 CLC 2050

Interim injunction, grant of---Object, purpose and scope---

Temporary injection by its nature is a preventive remedy with the object of maintaining the status quo and preventing irreparable damage or preserving the subject matter of litigation until the trial is concluded order to succeed in obtaining a temporary injunction, a plaintiff has to establish co-existence of three conditions or ingredients.

- (i) Prima facie case,
- (ii) Possibility of suffering an irreparable loss if the temporary injunction is declined and
- (iii) Balance of convenience leaning in his favour

Court has to form its opinion as to who has a better case after tentatively analyzing rival contentions of parties as contained in their pleadings-

If Court is satisfied that case of plaintiff is on a better footing and on conclusion of trial relief may be granted to him in all likelihood, then Court can infer that plaintiff has a prima facie case---To ascertain whether a plaintiff has a prima facie case, Court tentatively examines not only pleadings of the parties but their affidavits, counter affidavits and documents appended with plaint and written statement.

Hence in conclusion the court, while keeping in view all the facts and circumstances of the case has to decide whether it is the report of the local commission, pleadings, a case of prima facie, or on which party the balance of convenience or inconvenience would lie. It requires the court to assess which party would face great inconvenience or hardship if the injunction is granted or refused. The court uses assessment to make a fair decision while maintaining equilibrium between the parties until the case is fully resolved.
