

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P No.3635/2019.**

Malik Imran

Versus

Tariq Azam etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01. 31.10.2019 Raja Faheem Haider, Advocate for the petitioner.

Through the instant writ petition, the petitioner has assailed the order dated 18.09.2019, passed by learned Additional District Judge-West, (MCAC) Islamabad, whereby the revision petition was dismissed against the order dated 09.07.2019, passed by learned Trial Court, whereby application for appointment of local commission for demarcation of land/property was accepted.

2. Learned counsel for the petitioner inter-alia contends that the petitioner filed a suit for declaration and permanent injunction titled “*Malik Imran vs. Tariq and another*” with the prayer that he be declared as lawful owner in possession of suit land situated in Khewat No.168, Khatooni No.314, 313, Khasra No.2425/2272/379, Mouza Sorain, Islamabad; that the respondents filed their written statement, whereby respondent No.2 filed an application for appointment of local commission for the purpose of demarcation, which was allowed by Trial Court without any basis as the factual dispute is not visible in this case; that the entire lis is revolving around abuttals (محل وقوع) which has been provided in the registered sale deed and there is no dispute of demarcation of the property; that learned Revisional Court has also not appreciated the law as learned Trial Court has exercised the jurisdiction not vested in it.

3. I have heard learned counsel for the petitioner and gone through the record.

4. Perusal of the record reveals that the petitioner is plaintiff in suit for declaration and permanent injunction titled "*Malik Imran vs. Tariq and another*" in which he claims that he is owner in possession of suit property prescribed in Para No.1 of the plaint. Respondent No.2 filed an application for demarcation of the land with the contention that they have nothing to do with Khewat No.168 and the plaintiff is interfering in their possession, therefore, following request has been made:-

"اندریں حالات استدعا ہے کہ محکمہ مال کے مجاز آفیسر کو بطور لوکل کمیشن تعینات کیا جائے جو اس بات کا تعین کرے کہ آیا موقع پر تعمیرات کھیوٹ نمبر 168 میں ہو رہی ہیں یا نہیں تاکہ اصل صورت حال عدالت جناب کے سامنے آسکے۔"

5. The above referred request made in the application clearly spells out the factual dispute on spot regarding construction and this aspect can only be resolved by exercising powers in terms of section 75 CPC read with order XXVI Rule 9 CPC, whereby Civil Court can appoint local commission for the purpose of local investigation or elucidating any matter in dispute. Even otherwise, if such demarcation has been conducted, the same can further help out the parties as well as learned Trial Court for adjudication of the matter as the matter in issue and controversy cannot be resolved on the basis of registered sale deeds, which are usually registered without inquiring into the factual determination of land.

6. I have gone through the order passed by learned Trial Court, whereby Tehsildar, Islamabad has been appointed as local commission, who can verify the land on spot while considering the sale deeds, revenue record of the respective parties and no controversy will arise. Similarly, I have gone through the order passed by Revisional Court and it has rightly been observed that

demarcation of the suit land will be helpful for decision of the controversy between the parties.

7. Keeping in view above background, the pleadings of the parties as well as documents appended with instant writ petition reflect that there is some dispute qua the identification of the land with reference to different Khewat numbers and the local commission has rightly been appointed, however, it is also well settled that when concurrent findings have been given by the Courts below such matter cannot be agitated in Constitutional jurisdiction as the petitioner has failed to point out any jurisdictional defect in the impugned orders, therefore, instant writ petition is misconceived and the same stands *dismissed in limine.*

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam