



# *Chhattisgarh State Judicial Academy Bilaspur*



## ***Divisional Judicial Seminar on Commission Report-Issue of Commission & Local Inspection, Procedure & Admissibility in Evidence***

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### ***A Presentation***

***Compiled by District Kabirdham***

*Under the guidance and support of our **Hon'ble District Judge Smt. Neeta Yadav madam, District Kabirdham** whose guidance and support have been instrumental in helping us for the preparation of this presentation.*

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**Commission Report-Issue of Commission & Local  
Inspection, Procedure & Admissibility in Evidence**

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## **1. Introductory**

Commission & commissioner report caught national attention recently owing to commissioner survey being undertaken by order of Court adjudicating famous ‘**Gyanvaapi Mosque Case**’

**Now the question is what we meant by Commission and commissioner.**

Commission is instruction or role given by the Court to a person to act on behalf of it & perform all such acts as instructed to him by the court to deliver full and complete justice. Such person who carries out the commission is known as a commissioner.

**The provisions relating to appointment of Commissioner is set out in procedural laws-Civil & Criminal Procedure code which are as follows .**

1. Sec 75-78 (Part-III, Incidental Proceedings)

& O 26 R 1- 22 of . CPC

2. Sec 284-291 of . CrPC

3. Rules 243-268 of . CG rules and orders civil

4. Rule 123 of CG rules and orders criminal

## **2. Rationale for issuing Commission**

As per sec 75 CPC, Commission can be issued for following purposes and Order 26 of CPC provides procedure to be adopted for it -

1. For examination of witnesses esp sick/infirm/exempted persons
2. To perform a local investigation
3. For adjustment of accounts
4. To do a partition
5. To hold scientific investigation
6. For conducting a sale
7. For the performance of a ministerial act.

As per sec [284 CrPC](#), In the course of any inquiry, trial or other proceeding under the code of criminal procedure, a Court or may issue a commission for the examination of the witness.

**Sec 285 to sec. 291 CrPC deals with the procedure for the issuance of commission**

***\*Now coming to these aspects in detail***

### **1. Commission for examination of witnesses-**

Issuing of commission for the purpose of examination of witnesses is guided by **Sections 76 to 78 and by Rules 1 - 8 of Order 26**. Where the witness is unable to attend Court due to

reasonable cause to the satisfaction of the court, the Court relaxes the rule of attendance in the Court and issues commission. The reasons for non-attendance of the witnesses may be on the grounds of illness, or if the witness resides beyond the local limits of the jurisdiction of the Court or any other reasons as the Court may find sufficient.

**As per sec 284CrPC.-When attendance of witness may be dispensed with and commission issued.**—(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter.

In the case of **Paramhansa Ramkrishna v. Trimbak Rajaram AIR 1978 Bom 176**, the court had issued a commission to record the evidence of the witness who was a Parmahansa. Parmahansa are people who practice various religious rituals and practices and due to which they remain and roam around naked.

Similarly in the case of **Vinayak Trading Co. v. Sham Sunder & Co. AIR 1987 AP 236**, the court had issued a

commission for the recording of the statement of the witness, as the court had apprehended danger to the life of the witness if he is compelled to come to the court.

## **2. Commission to perform a local investigation**

This is covered by Rules 9 and 10 of Order 26 of the Code of Civil Procedure. Courts can issue such commission where it finds that there is a need to:

1. To get a proper clarity regarding a matter in dispute; &
2. To get a proper valuation of the property in dispute if any, or if any damages or mesne profits is involved in the claim of a suit, then finding the exact amount for the same.

The main reason to conduct a local investigation by issuing a commission is to find out and obtain evidences which would bring clarity and help the court in determining the case. The investigation is performed where the evidences are of peculiar in nature and which can only be ascertained by visiting and conducting an investigation at the spot.

In the case of **Southern Command Military Engg. Services Employees Coop. Credit Society v. V.K.K. Nambiar**, the court had to issue a commission to find out whether the tenants had really occupied the premises in dispute of the suit. This was a peculiar situation which can only be ascertained by visiting the place and conducting investigation.

### **3. Commission for adjustment of accounts**

Rules 11 and 12 of Order 26 of the Code of Civil Procedure, 1908 guide the action of conducting an investigation by the Court by issuing a commission to examine and for the adjustment of accounts. The Court issues necessary instructions to the commissioner and the reports provided by the Commissioner shall then be deemed to be evidence in the Court.

### **4. Commission to do a partition**

This is guided by **Rules 13 and 14 of Order 26 of Code of Civil Procedure, 1908**. In this case, the Court issues a Commission when a preliminary decree of partition of an immovable property has been passed by the Court. The duty of the Commission is to make the partition according to the guidelines provided by the decree. The Commissioner then divides the property into the required number of parts and then allots the shares to the parties. After partitioning and allotting the parts of the property to the rightful owners, the Commissioner prepares a report and provides it to the Court. After allotting, if any party objects or is unsatisfied of something, the Court hears their objections and passes a final allotment decree.

### **5. Commission to hold scientific investigation**

Rule 10 - A of Order 26 of the Code of Civil Procedure, 1908 guides this cause of issuing a commission. When the Court finds

that the issue of a case deals with any peculiar dispute which requires a scientific investigation and which cannot be successfully conducted in the Court premises, the Court issues a commission to investigate into the matter and inquires into the matter.

#### **6. Commission to sell property**

This is guided by **Rule 10-C of Order 26 of the Code of Civil Procedure, 1908**. The Court issues such commission when the Court requires selling a movable property on which the Court has custody and on which a case is pending. The selling of the property becomes necessary if the property cannot be properly preserved or if the court deems the selling necessary in the interest of justice. The Commissioner is directed to sell off the property and submit the report of the sale to the Court.

#### **7. Commission for the performance of a ministerial act**

The statute guiding this is Rule 10-B of order 26 of the Code of Civil Procedure, 1908. The Court issues a Commission when a requirement of the performance of a ministerial act comes. Ministerial Acts constitutes works like accounting, calculation and works of the same nature. The ministerial acts do not require the application of judicial mind and if done by the Court, it would lead to wastage of Court's precious time. The

Court issues a commission who would perform all the ministerial acts as required and after completion the Commissioner shall provide the report to the Court.

### **3. What should be the main considerations for a court for issuing Commission**

Important aspects to be considered while passing order for issuing a commission are-

- 1) Total pleadings of both parties;
- 2) Relief claimed in suit;
- 3) The real controversy between the parties
- 4) The issuance of commission should be in the interest of justice
- 5) The issuance of commission should be for facilitating expeditious disposal of the case .
- 6) The issuance of commission should be for the furtherance of complete justice.

## **4. Process of issuance of commission**

An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined. The provisions of Order 26 CPC shall apply, so far as may be, to proceedings in execution or a decree or order. for the furtherance of complete justice.

Every High Court has the power (Article 227) to make rules and regulations which is to be followed by the subordinate Courts. Procedure for appointment of a commissioner is provided in High Court rules of each state.

The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

***\*Letter of Request***

**under Order 26 rule5 CPC** ,Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within [India] is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

## **5. Who can be appointed as a commissioner?**

Generally, there is a panel of commissioners which is formed by the High Court in which advocates are selected who are competent to carry out the commission issued by the Court.

The person appointed as commissioner should be independent, impartial, disinterested in the suit and the parties involved in it. Such a person should have the requisite skills to carry out the commission.

The District judge supervises the subordinate Courts who have to take special care while appointing a commissioner. The same person should not be appointed by the Court in all commissions and a person who hangs about the Court should not be appointed.

**Under order 26 rule 4 CPC, Any Court may in any suit issue a commission,** for the examination on interrogatories or otherwise of-

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any person in the service of the Government who cannot in the opinion of the Court, attend without detriment to

the public service:

**to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides,** or to any pleader or other person whom the Court issuing the commission may appoint.

The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

### ***\*Foreign Courts & Commission***

**Commissions can be issued at the instance of foreign courts under Order 26 rule 19-**

(1) If a High Court is satisfied—

(a) That a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) That the proceeding is of a civil nature, and

(c) That the witness is residing within the limits of the High Court's appellate jurisdiction,

It may, subject to the provisions of Rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or

(b) by a letter of request issued by the foreign Court and transmitted to the High Court through the Central Government, or

(c) by a letter of request issued by the foreign Court and produced before the High Court by a party to the proceeding.

**Application for issue of commission.**—The High Court may issue a commission under Rule 19

(a) Upon application by a party to the proceeding before the foreign Court, or

(b) Upon an application by a law officer of the State Government acting under instructions from the State Government.

**To whom commission may be issued.**—A commission under Rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the Court thinks fit to execute the commission.

**Issue, execution and return of commissions, and transmission of evidence to foreign Court.**—The provisions of Rules 6, 15, sub-rule (1) of Rules 16-A, 17, 18 and 18-B of

this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, along with the letter of request for transmission to the Foreign Court.

**Under sec 285 crpc: Commission to whom to be issued.**

(1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission, as the Central Government may, by notification, prescribe in this behalf.

## **6. Duties, Powers and Procedure of Commissioner**

Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

(a) Examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) Call for and examine documents and other things relevant to the subject of inquiry;

(c) At any reasonable time enter upon or into any land or building mentioned in the order.

(d) To divide the property into as many shares and allot them to the parties as directed by the order under which the commission is issued.

### **Questions objected to before the Commissioner.—**

(1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting:

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.

### **Where the witness becomes Hostile before the commissioner**

If a situation as to declaring a witness hostile arises before Commission recording evidence, the concerned party shall have to obtain permission from the court under Section 154 of the Evidence Act and it is only after grant of such permission that the Commissioner can allow a party to cross-examine his own witness. Having regard to the facts of the case, the court may either grant such permission or even consider to withdraw the commission so as to itself record remaining evidence or impose

heavy cost if it finds that permission was sought to delay the progress of the suit or harass the opposite party.

**Attendance and examination of witnesses before Commissioner.— order 26 rules 17 CPC provides**

(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the Commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of [India], and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court:

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but such penalties may be imposed on the application of such

Commissioner by the Court by which the commission was issued.

**Parties to appear before Commissioner.— order 26 rule 18 CPC provides**

(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the commissioner may proceed in their absence.

**\*Interrogatories or otherwise**

*Interrogatories are set of questions which the party administers on the other party with the leave of the court . The party to whom interrogatories are administered, must answer them in writing and on oath.*

*Order 26 CPC provides for the issuance of commission for the examination of the witnesses on interrogatories until and unless the Court, for reasons to be recorded, thinks it necessary so to do.*

**\*Return of commission -**

Rule 18 B CPC, provides that the Court issuing a commission shall fix a date on or before which the commission

shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.

Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall form part of the record of the suit.

### **In criminal law Under sec 286 Crpc**

Upon receipt of the commission, the Chief Metropolitan Magistrate or Chief Judicial Magistrate, or such Metropolitan or Judicial Magistrate as he may appoint in this behalf, shall summon the witness before him or proceed to the place where the witness is, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

### **Interrogatories**

#### **Section 287 of CrPC**

(1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any

interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the commission, is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate, Court or Officer by Pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

### **Return of commissions**

**sec 288 crpc:** Return of commission.

1) After any commission issued under section 284 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court or Magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872 (1 of 1872 ), may also be received in evidence at any subsequent stage of the case before another Court.

## **7. Local Inspection**

**sec 310 CrPC. Local inspection.—**

(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.

In **State of UP vs Het Ram (1976) 3 SCC 672** Hon'ble Apex Court has held that under local inspection actual place of occurrence must be examined- such examination must be for the purpose of evidence on record. If inspection had the effect of substituting the personal observation of the Judges for the evidence on the record then procedure adopted was illegal.

In case of **State of HP Vs. Mast Ram (2004) 8 SCC 660** Hon'ble Supreme court has held memorandum of spot inspection recorded by trial court is to be appreciated in conjunction with the evidence already recorded – any omission and/or commission would not constitute material irregularity.

## **8. Some important legal propositions about this aspect are -**

**Question :** Whether appointment of commissioner for specific purpose at interlocutory stage shall amount to grant pre-trial decree ?

**Answer:** No.

**Question :** Prior notice in case of Appointment of Commissioner is necessary ?

**Answer:** Though Order 26 Rule 9 CPC per does not envisage notice to the opposite party, the order containing unilateral direction without notice to the other side is perceived as somewhat unusual and contrary to the convention and practice for, it cannot be said that an application for appointment of an Advocate- Commissioner for the said purpose does not broke delay in issuing notice to the other side and hearing them.

**Question:** Exparte orders can be made in case of Appointment of Commissioner?

**Answer:** yes, ex-parte and without issuing notice to the other side, Commissioner can be appointed.

**Question :** When court can direct further enquiry ?

**Answer:** where the court has reason to be dissatisfied with the proceedings and report of the commissioner, it may direct such further enquiry as it shall think fit .

**Question :** *Whether Appointment of Commissioner can be made for the second time?*

**Answer:** Yes, if the court has reason to be dissatisfied with the proceedings and report of the first commissioner, then after recording the reasons in writing, it can appoint a second commissioner for the further inquiry.

**Question :** **What is the effect of Irregularities in Report ?**

**Answer:**In the matter of **Ramlal and ors. vs. Saligram and ors. (2020) 11 SCC 590**, Hon'ble Apex Court held that if the report of the Local Commissioner was suffering from an irregularity i.e., want of following the applicable instructions, the proper course was either to issue a fresh commission or to remand the matter for reconsideration but the entire suit could not have been dismissed for any irregularity on the part of Local Commissioner.

**Question :** **What is the Reliability Of Commissioner's report?**

**Answer:**In the matter of **M.P. Rajya Tilhan Utpadak ... vs M/S Modi Transport Service on 11 May, 2022** Hon'ble Apex Court held that When a court issues such a commission to such a person, it can direct the commissioner to make such an investigation, examination and adjustment and submit a report thereon to the court. The commissioner so appointed does not strictly perform a 'judicial act which is binding' but only a 'ministerial act'. Nothing is left to the commissioner's discretion, and there is no occasion to use his judgment or permitting the commissioner to adjudicate and decide the issue involved; the commissioner's report is only an opinion or noting, as the case may be with the details and/or statement to the court the actual state of affairs. Such a report does not automatically form part of the court's opinion, as the court has the power to confirm, vary or set aside the report or in a given case issue a new commission.

Hence, there is neither abdication nor delegation of the powers of functions of the court to decide the issue. Sometimes, on examination of the commissioner, the report forms part of the record and evidence.<sup>28</sup> The parties can contest an expert opinion/commissioner's report, and the court, after hearing objections, can determine whether or not it should rely upon such an expert opinion/commissioner's report. Even if the court relies upon the same, it will merely aid and not bind the court. **In strict sense, the commissioners' reports are 'non-adjudicatory in nature', and the courts adjudicate upon the rights of the parties.**

In the matter of **Zarif Ahmed (Dead) Through Legal Representatives and ors. vs. Mohd. Farooq (2015) 13 SCC 673**, Hon'ble Apex Court held that If evidence adduced by party is reliable and cogent then court can ignore Commissioner's report.

**Question : What is the Admissibility of commissioner report in matter of local investigations?**

**Answer:** under order 26 rule 12(2) CPC ,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. Commissioner report is not binding on Court and in fact his report is to be appreciated along with other evidence available on record in a given case.

**Question : What are the consequences of non-exhibition of Report in Evidence?**

**Answer:** It is not at all necessary for the Court to examine the Commissioner for the purposes of proving the said report. No formal proof is needed to prove the report when the Commissioner has been appointed under Order 26 Rule 9 CPC.

In the matter of **New Multan Timber Store vs. Rattan Chand Sood (1997) SCC OnLine Del 737**, Hon'ble Delhi high Court held that the report of the Commissioner under Order 26, Rule 10 Civil Procedure Code is a legal evidence. Hence it was not at all necessary for the Court to examine the Commissioner for the purposes of proving the said report. No formal proof is needed to prove the report when the Commissioner has been appointed under Order 26 Rule 9 CPC. Thus if the Commissioner was not summoned and examined as a witness and as such no opportunity was given to the appellant to cross examine the Local Commission they can blame none but themselves for the impasse which they find themselves in.

**Question :** What is the effect of Objections against the report of local commission-?

**Answer:**In **Balbir Dewan v/s Naveen Chander AIR 1989 P&H 257**, Hon'ble Punjab and Haryana high Court Observed that there is no provision for inviting objections to the report of local commissioner. Therefore, no issue could be framed upon such report. The practice of inviting objections in the report not proper. Objections if filed, shall be considered after crossexamination of local commissioner under rule 10.

**Question :** What is the Probative value of scientific investigation directed by court?

**Answer:** Hon'ble Apex Court in **M. Siddiq (Ram Janmabhum Temple 5J) v. Suresh Das, (2020) 1 SCC 1** held that the weight ascribed to expert evidence is based on the nature of the science on which it is based. Archaeological findings, held, are not so subjectively inferential as to be considered as being incapable of furnishing verifiable or reliable conclusions. Ultimately, held, it lies within jurisdiction of court to decide whether findings that are contained in Commissioner's Report/ASI Report subserve the cause of truth and justice on the basis of relevance and preponderance of probabilities. Commonsense ought to guide the exercise of judicial discretion, here as in other branches of the law

**Question :** When depositions may be read in evidence?

**Answer:** Order 26 rule 8 of CPC says Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a [person in the service of the

Government] who cannot, in the opinion of the Court attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

**Question :** What is the distinction between the appointment of a Commissioner under Order 26, Rule 9 and Order 39, Rule 7 of CPC?

**Answer:** Where the matter in dispute requires further elucidation a Commission can be issued under Rule 9 of Order 26 of the Code, and where it is necessary or expedient for purpose of obtaining full information or evidence, the Court may authorize the Commissioner under Order 39, Rule 7 of the Code to inspect any property in dispute to take any samples or to make any observation or to conduct any experiment for that purpose. These two provisions operate thus separately and for different purposes. One is to elucidate the fact in dispute and the other is to obtain full information and evidence mostly for the purpose of keeping on record the existing condition of the property so that if the same is subjected later on to any change, deterioration or mischief by any of the parties or by any other agency or reason, that can be known by the Court if and when required.

**Question : When Commissions are not to be issued?**

**Answer:** Power of appointment of Commissioner for local investigation cannot be exercised by the Court to assist party to collect evidence

In the matter of **Union of India & anr. vs. M/s kripal industries 1998 SCC Online Raj 51**, Hon'ble Rajasthan high Court held that Power of appointment of Commissioner for local investigation cannot be exercised by the Court to assist party to collect evidence where it can get evidence itself.

In **Putappa Vs Ramappa A.I.R.1996, Karnataka 257**, the Karnataka High court has decided that after issue of perpetual injunction, where the issue involved is the possession of property, the commissioner cannot decide such dispute.

## **9. Conclusion**

*By adhering to the provisions relating to the issue of commission and local inspection in the relevant circumstances, we can adjudicate the matter of dispute completely and that too upto the satisfaction of the parties.*

**ANNEXURES :**

**Forms for writ of commission-  
CPC Appendix-H Form No-7, 8, 9 10**

**NO. 7**

**COMMISSION TO EXAMINE ABSENT WITNESS (O. XXVI, rr. 4 and 18)**

*(Title)*

*Judge*

To

.....  
.....

Whereas the evidence of.....is required by the.....in the above suit; and whereas.....; you are requested to take the evidence on interrogatories [or *viva voce*] of such witness.....and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs..... being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this ..... day of ..... 19..../20....

*Judge*

**NO. 8**

**LETTER OF REQUEST (O. XXVI, r. 5)**

*(Title)*

(Heading :— To the President and Judges of, etc., etc., or as the case may be.)

Whereas a suit is now pending in the ..... in which A. B. is plaintiff and C.D. is defendant; And in the said suit the plaintiff claims.

*(Abstract of claim)*

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say :-

..... E. F., of.....

..... G. H., of..... and

..... I.J., of.....

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I, ..... as the ..... of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said ..... or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before the some one or more of you or such

**NO. 9**  
**COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS**  
**(O. XXVI, rr. 9 and 11)**  
*(Title)*

To  
.....  
.....

Whereas it is deemed requisite, for the purposes of this suit, that a commission for..... should be issued; You are hereby appointed Commissioner for the purpose of.....

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. .... being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this..... day of ..... 19.../20....

*Judge*

**NO. 10**  
**COMMISSION TO MAKE A PARTITION (O. XXVI, r. 13)**  
*(Title)*

To  
.....  
.....

Whereas it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the .....day of..... 19.../20....; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties.

You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witnesses or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. .... being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this ..... day of ..... 19.../20....

*Judge*

**Thanking Note :**

***We as a team express our heartfelt gratitude to Chhattisgarh State Judicial Academy Bilaspur for providing us this platform to exchange our views & enrich our knowledge. Also we are grateful & thankful to all members of judicial fraternity & all concerned who helped & guided us to make this presentation possible.***

*Thank  
you*