

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.20 of 2024

Date of Decision : 30.12.2025

Kashmir Singh

..... Appellant

Versus

Sita Ram

.....Respondent

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellant : Mr. Narender Kumar Reddy, Advocate.

For the respondent : Mr. Vikrant Thakur and Mr. Shubham Singh
Guleria, Advocates.

Bipin Chander Negi, Judge (oral)

The Appellant, by filing this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), has assailed the judgment and decree dated 01.11.2023, passed by learned District Judge, Mandi Division, District Mandi, Himachal Pradesh, in Civil Appeal No.26 of 2023, titled *Kashmir Singh vs. Sita Ram*, whereby the judgment and decree dated 11.01.2023, passed by learned Civil Judge, Chachiot at Gohar, District Mandi, Himachal Pradesh, have been affirmed

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.

3. The material facts necessary for the disposal of the present second appeal are that the plaintiff-respondent filed a civil suit before the learned trial Court initially seeking a permanent prohibitory injunction to restrain the defendant-appellant from interfering in the suit land, which was later amended to include the relief of mandatory injunction for possession. The plaintiff pleaded that he is the owner in possession of the suit land, having sold a portion of it to others, and is now the owner of the remaining land bearing khasra no. 1226/1153/128/2. The defendant, an owner of adjacent land, was alleged to have no right, title, or interest over the suit land but was interfering with it and had dispossessed the plaintiff from a part of the land bearing khasra no. 1592/128/2 during the suit's pendency. The defendant opposed the suit by filing a written statement raising preliminary objections regarding maintainability, cause of action, proper valuation for court fee and jurisdiction, suppression of material facts, and non-joinder and mis-joinder of necessary parties. On merits, the defendant denied the plaintiff's contents, asserted that he constructed his house on his own land in 2009, and claimed that a false report was submitted by the Local Commissioner at the plaintiff's instance, with no encroachment having been made.

4. The learned trial Court framed issues on 17.10.2013, with an additional issue framed on 14.03.2018, which read as follows:-

1. *Whether the defendant is liable to be restrained from causing any interference over the suit land through a decree of permanent prohibitory injunction, as prayed for? OPP*
2. *Whether the plaintiff is also entitled for the relief of mandatory injunction to the effect that in case he is*

dispossessed or any construction is raised, it is liable to be restored, as prayed for? OPP

2A. Whether the plaintiff is entitled to the relief of possession, as prayed for? OPP

3. Whether the suit is not maintainable in the present form, as alleged? OPD

4. Whether the suit of the plaintiff is not valued for the purpose of Court fee and jurisdiction, as alleged? OPD

5. Whether the plaintiff has no enforceable cause of action to file the present suit, as alleged? OPD

6. Whether the plaintiff has not come to the Court with clean hands, as alleged? OPD

7. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties, as alleged? OPD

8. Relief.

5. The parties led their evidence, and the plaintiff relied upon a demarcation report. The learned trial Court initially dismissed the suit, observing that while the plaintiff was the owner, the demarcation report was not acceptable. Upon appeal, the first appellate Court set aside this dismissal and remanded the matter for fresh consideration of the local commissioner's report. Subsequently, the learned trial Court decreed the suit, holding that the plaintiff had successfully pleaded and proved that the defendant had encroached upon part of the suit land.

6. Aggrieved by this decree, the defendant preferred a first appeal, contending that the judgment was against law and facts, that the lower court had not considered the pleadings and evidence, had not appreciated the appellant's evidence, and had ignored the proper demarcation procedure under Chapter 10 of the Himachal Land Revenue Act. It was further argued that undue reliance was placed on a

demarcation report conducted without issuing summons to the appellant, that the appellant's house construction was completed in 2009 on his own land, and that the plaintiff's witness had admitted this during cross-examination. The appellant prayed for the appeal to be allowed and the impugned judgment set aside. The plaintiff-respondent supported the trial court's decree. The first appellate court, however, after hearing the parties and perusing the record, dismissed the appeal. Therefore, the present second appeal has been filed.

7. Heard Counsels for the parties, perused the impugned judgments.

8. In the present case, the plaintiff's case hinges substantially on the report of the local commissioner appointed for demarcation. The record reveals that an initial demarcation report was rightly set aside by the learned trial Court as it did not comply with the mandated procedure under the Himachal Pradesh Land Record Manual and the established instructions of the Financial Commissioner. Subsequently, with the consent of the parties, the Tehsildar, Thunag was appointed as a local commissioner to conduct a fresh demarcation in strict adherence to the prescribed legal framework. This commissioner submitted a detailed report, marked as (Ex.CW1/A), along with a spot map (Ex.CW1/B), which categorically indicated that the defendant had encroached upon an area of 0-1-15 bighas of the suit land, specifically in khasra no. 1592/128/1, and had raised construction thereon. Crucially, the statements of both parties were recorded during this demarcation process, wherein they

expressed satisfaction with the fixed permanent points and the submitted procedure followed. Objections were filed against this report but were considered and dismissed by the learned trial Court vide a detailed order dated 12.12.2018, which order has since attained finality as it was not challenged in appeal.

9. The defendant's challenge to this conclusive demarcation report lacks merit. The contention that the demarcation was conducted without issuing summons to the defendant is negated by the commissioner's record, which includes the defendant's statement at the spot. Furthermore, the procedure adopted aligns with the binding instructions outlined in Chapter 10 of the Himachal Pradesh Land Record Manual and the judicial precedents, including ***Ram Lal vs. Salig Ram, AIR 2019 SC 719***, which mandate the identification of three permanent points on different sides of the land in question. The commissioner's report satisfactorily demonstrates compliance with these requirements. The oral evidence led by the plaintiff's witnesses, including the Patwari (PW-2) and the retired Naib Tehsildar who conducted the initial demarcation (PW-3), corroborates the sequence of events and the defendant's involvement. While the defendant and his witness (DW-1) asserted that the construction on his land was completed as early as 2009, this assertion does not, in itself, disprove the specific finding of encroachment onto the plaintiff's distinct khasra number as definitively established by the final and legally sound demarcation report.

10. In light of the foregoing, the learned trial Court's decree in favour of the plaintiff was based on a correct appreciation of the cogent and legally admissible evidence on record, particularly the unchallenged and procedurally compliant demarcation report which conclusively proved the defendant's encroachment. The first appellate court, upon a reappraisal of this material, rightly found no infirmity in the trial court's judgment.

11. In view of the aforesaid, there arises no question of law, much less a substantial question of law, for the consideration of the Court. Accordingly, the appeal being devoid of merit is dismissed, so also the pending miscellaneous application(s), if any.

December 30, 2025 (KS)

(Bipin Chander Negi)
Judge