

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA-1938-2023 (O&M)**Roshan Lal @ Roshan Lal Bakshi**

. . . . Appellant

Vs.**Kapil Mohan**

. . . . Respondent

Reserved on:10.09.2026**Pronounced on:11.09.2026****Pronounced Fully/Operative Part: Fully**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Rohit Singh, Mr.Jagmeet Singh Antal and Ms.Parvishi,
Advocates, for the appellant.

DEEPAK GUPTA, J.

The appellant-defendant is in second appeal against the judgment and decree dated 04.08.2022 passed by the learned Additional District Judge, Yamuna Nagar at Jagadhari, whereby his appeal against the judgment and decree dated 30.04.2015 passed by the learned Civil Judge (Junior Division), Bilaspur, has been dismissed, and the decree of permanent injunction in favour of the respondent-plaintiff has been affirmed.

2. The respondent-plaintiff instituted the suit seeking permanent injunction restraining the appellant from interfering with his possession over land measuring 6 kanal 16 marla comprised in Khasra No.84//28 and from interfering with his use of the passage comprised in Khasra No.392. Restraint was also sought against cutting/removing the safeda trees standing over the plaintiff's land and raising construction over the passage.

3. The appellant-defendant contested the suit, while admitting that Khasra No.84//28 belonged to the plaintiff and asserting that he had no concern with that khasra number. His case was that the plaintiff had

encroached upon a portion of Khasra No.392, which, according to him, belonged to the Gram Panchayat, and reliance was placed upon a demarcation report dated 26.10.2013.

4. The learned Trial Court, after recording the evidence of the parties, decreed the suit. In respect of Khasra No.84//28, it noticed the admission of the defendant regarding the plaintiff's ownership and possession. As regards Khasra No.392, the Trial Court found the demarcation report dated 26.10.2013 unreliable, inter alia, because the demarcation was conducted on two dates without proper presence sheets, the concerned witness was uncertain regarding the dates of demarcation, and the demarcation had been carried out from only one burji, whereas, according to his own testimony, it was required to be conducted from three sides.

5. The first appellate Court independently examined the oral and documentary evidence. It noticed, in particular, the admissions of the appellant while appearing as DW1 that the passage was the only access to the plaintiff's land and that the plaintiff had a right to use it. It also found the evidence of the official, who had conducted the earlier demarcation materially deficient.

6. The first appellate Court further took note of the subsequent demarcation conducted pursuant to an order passed in the appeal. The said demarcation report dated 15.02.2019 was carried out by the Tehsildar, Bilaspur through digital demarcation and recorded that the appellant was in illegal possession of a portion of Khasra No.392. The appellate Court specifically distinguished this report from the report dated 10.03.2018 obtained in the execution proceedings and held the former to be relevant for deciding the appeal.

7. Before this court, learned counsel for the appellant has essentially sought to assail the concurrent conclusions on the ground that the plaintiff had not established his right over the passage and that the demarcation report relied upon by the appellant had wrongly been discarded. It is also contended

that the Courts below have failed to properly appreciate the evidence relating to the alleged encroachment.

8. Having considered the submissions, this Court finds no ground to interfere.

9. The plaintiff's ownership over Khasra No.84//28 was not a disputed question before the Trial Court. The appellant himself categorically pleaded that the plaintiff was owner of Khasra No.84//28 and that he had no concern with that khasra number. The same position was reiterated in his evidence. The Trial Court, therefore, rightly proceeded on the basis of an admission of the appellant himself.

10. The dispute essentially centred around the passage comprised in Khasra No.392. On this aspect also, the appellant's own testimony materially supports the decree. He admitted that the passage was the only way available to the plaintiff to approach his land and further admitted that the plaintiff had a right to use the passage.

11. The appellant's main reliance upon the demarcation report dated 26.10.2013 also does not advance his case. The Trial Court, after examining the testimony of the Kanungo, who had conducted the demarcation, recorded specific reasons for not placing reliance upon the report. The deficiencies were not merely technical. The witness admitted absence of proper presence sheets, uncertainty regarding the dates of demarcation and non-compliance with the requirement of conducting demarcation from three sides.

12. The first appellate Court independently considered these deficiencies and, therefore, its conclusion that the demarcation report dated 26.10.2013 could not safely be relied upon cannot be characterised as perverse.

13. Besides, the first appellate Court did not rest its conclusion merely upon the earlier oral evidence. Pursuant to an order passed during the pendency of the appeal, digital demarcation was conducted by the Tehsildar, Bilaspur. The report dated 15.02.2019 indicated illegal possession of a portion

of the passage by the appellant. The appellate Court also recorded that objections filed by the appellant against the said report had been separately dismissed.

14. The subsequent demarcation was thus not relied upon as an unproved private document but arose from a demarcation undertaken pursuant to the order of the appellate Court. The appellant had the opportunity to object to the same, and the appellate Court considered the competing demarcation material before arriving at its conclusion. The mere fact that the appellate Court preferred the later demarcation over the earlier disputed report does not convert the matter into a substantial question of law.

15. It is well settled that the jurisdiction under Section 100 CPC is confined to substantial questions of law. A second appeal cannot be entertained merely because the appellant seeks a different appreciation of the evidence or because another view of the facts may be possible. In ***Santosh Hazari v. Purushottam Tiwari (Dead) by LRs., (2001) 3 SCC 179***, the Hon'ble Supreme Court explained the nature of a substantial question of law and reiterated that the High Court is not to interfere merely with findings of fact. The principle was reiterated in ***Hero Vinoth (Minor) v. Seshammal, (2006) 5 SCC 545***, wherein interference with concurrent findings is justified only in exceptional circumstances, such as where the findings are based on no evidence, are perverse, or have been arrived at by ignoring material evidence or applying an erroneous legal principle.

16. The present case does not fall within any such exceptional category. Both Courts below have considered the evidence led by the parties. Their conclusions are supported by the appellant's own admissions, the revenue material and the assessment of the demarcation evidence. The first appellate Court has independently considered the grounds raised in appeal and affirmed the decree for reasons recorded by it.

17. It is also noteworthy that the appellant's challenge is directed substantially against the finding of possession/encroachment. Such finding, in

the facts of the present case, is essentially one of fact. No question involving interpretation of any statutory provision or determination of a pure question of law has been shown to arise.

18. The submission that the plaintiff was himself allegedly in possession of some portion of Khasra No.392 does not furnish a ground for interference with the decree. Even otherwise, the Courts below were concerned with the plaintiff's right to use the passage and the appellant's interference therewith. The appellant's own admission that the passage was the only access to the plaintiff's land and that the plaintiff had the right to use it substantially answers this aspect.

19. This Court is, therefore, of the considered view that the findings recorded by the Courts below are neither perverse nor based upon misreading of the evidence. No material evidence has been shown to have been ignored in a manner giving rise to a substantial question of law. The appellant is, in substance, seeking reappreciation of evidence, which is outside the permissible scope of jurisdiction under Section 100 CPC.

20. No substantial question of law arises for consideration in the present appeal. The appeal is accordingly dismissed. Pending miscellaneous application(s), if any, shall stand disposed of accordingly.

11.09.2026

Vivek

*Whether Speaking/reasoned
Whether reportable*

(DEEPAK GUPTA)
JUDGE

*Yes
No*

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