

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

1)

**R.S.A No. 1558 of 2006(O&M)
Date of decision :27.05.2016**

Rajpal etc.

..... Appellants

Versus

Chander Kala

.....Respondent

2)

R.S.A No. 3308 of 2010(O&M)

Rajpal

..... Appellant

Versus

Smt. Chander Kala

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.B.R.Vohra, Advocate
for the appellant.

Mr. R.S.Budhwar, Advocate
for the respondent-Chander Kala.

Mr. Manoj Dhankar, AAG, Haryana.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

1. This judgment of mine shall dispose of both the Regular Second Appeal's mentioned above as the common question of law and facts are involved in both the appeals.

2. RSA No. 3308 of 2010 has been preferred by appellant-plaintiff Raj Pal against the judgment and decree dated 16.01.2010 passed by the learned District Judge, Sonapat, whereby the appeal filed by him against the judgment and decree dated 04.03.2009 passed by the learned Additional Civil Judge (Senior Division), Ganaur, has been dismissed.

3. R.S.A No. 1558 of 2006 has also been preferred by defendant-Rajpal and others against the judgment and decree dated 01.03.2006 passed by the learned Additional District Judge, Sonapat, vide which the appeal filed by them against the judgment and decree dated 04.10.2005 passed by the learned Additional Civil Judge (Senior Division), Ganaur, has been dismissed.

4. R.S.A No. 3308 of 2010 has arisen out of the suit filed by appellant Raj Pal against respondent-defendant Smt. Chander Kala for mandatory injunction for issuance of a direction to defendant-respondent to remove the illegal encroachment made by her over Khasra No. 272 situated in village Garhi Kesri, Tehsil Ganaur, District Sonapat. The said khasra number is a watercourse (Khal) of 2 Karam (11 feet) wide, which was carved out during the consolidation proceedings out of the shares of the land owned by the proprietors.

5. The said suit filed by appellant-plaintiff Raj Pal was dismissed by the learned trial Court vide impugned judgment and decree dated

04.03.2009. The appeal filed by him was also dismissed by the learned District Judge.

6. R.S.A No. 1558 of 2006 has arisen out of the suit filed by plaintiff-respondent Chander Kala against the appellants-defendants Raj Pal and others. She has filed the suit for permanent injunction restraining the appellant-defendants from encroaching upon the watercourse comprised of khasra no.285 (11 feet) wide situated within the revenue estate of village Garhi Kesri, Tehsil Ganaur, District Sonapat. It is alleged that the defendants have encroached upon the said watercourse by constructing the *pucca* house.

7. The said suit filed by Smt. Chander Kala was decreed by the learned trial Court. The appellant-defendants were restrained from encroaching upon the area of watercourse bearing khasra no.285. They were also directed to remove the construction raised by them over it prior to filing of the present suit as well as during the pendency of the suit at their own expenses within three months from the date of getting the certified copy of the judgment.

8. During the pendency of the appeals, this Court on 11.09.2014, passed the following order:-

“The dispute in the two appeals is as to whether parties to the dispute have encroached upon part of Khasra Nos. 272 and 285, which is a water channel adjoining to Railway Road, Gannaur Mandi. Admittedly, the portions of khasra Nos. 272 and 285 are not in ownership of the parties. The demarcation is there, but both the parties are disputing the correctness thereof.

Copies of the paper books in both the appeals have been handed over to Mr. D. D. Gupta, Addl. Advocate General, Haryana, who will get the area demarcated and find out as to whether parties to the dispute are in illegal possession of any land beyond their ownership. In addition thereto, he may also get a report as to whether any other person has also encroached upon

part of the water channel, which is stated to be not in use at present.

Adjourned to 11.11.2014.

A photo copy of the order be placed on the file of connected case.”

9. In compliance of this order, the demarcation of khasra nos.272 and 285 was carried by Tehsildar Ganaur and the report has been received which is available on record of RSA No.3308 of 2010. As per the said report, Smt. Chander Kala has encroached upon the area of khasra no.272 to the following extent:-

Khasra No.	Mark	East	West	South	North
272	Q	4'-4"	9	88	88

10. Similarly, appellant Rajpal has also encroached upon the area of khasra no.285 to the following extent:-

Khasra No.	Mark	East	West	South	North
285	S	143	143	11	11

11. Thus, from the demarcation report of Tehsildar Ganaur, who has conducted the demarcation in compliance of the order dated 11.09.2014 passed by this Court, it is proved that both the parties have made the encroachment. Respondent-Chander kala has made the encroachment in khasra no.272 whereas appellant-Rajpal has made the encroachment in khasra no.285. The findings recorded by the Tehsildar, Ganaur in the demarcation report has not been challenged by either of the parties before this Court at the time of arguments. So, both these appeals are to be decided as per the demarcation report dated 22.03.2015 of Tehsildar, Ganaur.

12. Consequently, R.S.A No. 3308 of 2010 titled as 'Rajpal Vs. Smt. Chander Kala' is hereby allowed. The suit filed by appellant-plaintiff Rajpal for mandatory injunction is hereby decreed. Respondent-defendant Chander Kala is directed to remove the encroachment from khasra no.272 to

the following extent within three months from the date of this judgment:-

Khasra No.	Mark	East	West	South	North
272	Q	4'-4"	9	88	88

13. RSA No. 1558 of 2006 titled as 'Rajpal and others Vs. Smt. Chander Kala' has no merits and the same is hereby dismissed. It is clarified that the appellant-defendants will remove the encroachment made by them in khasra no. 285 to the following extent:-

Khasra No.	Mark	East	West	South	North
285	S	143	143	11	11

The remaining part of the decree passed by the learned Courts below will remain intact.

14. Before parting with this judgment, it is appropriate to mention the demarcation report shows that various other persons have also made encroachments in khasra no. 272 and 285. The Collector, Sonapat should take the steps to get that encroachments removed in accordance with law. The copy of demarcation report and copy of this judgment be sent to Collector, Sonapat.

27.05.2016
S.khan

(DARSHAN SINGH)
JUDGE