



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

(145)

RSA-2009-1992 (O&M)

Date of decision: - 12.08.2024

M/S INTERNATIONAL WOOLEN MILLS

....Appellant

Versus

HARPAL MALHOTRA & ORS.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present :- Mr. M.L. Saggar, Senior Advocate, with
Ms. Armaan Saggar, Advocate,
for the appellant.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate
Ms. Shruti Singla, Advocate, and
Mr. Shrey Sachdeva, Advocate
for respondent No.1.

VIKAS BAHL, J. (ORAL)

1. Present Regular Second Appeal has been filed by the plaintiff No.1 against concurrent findings of fact. The suit filed by the plaintiffs for possession of land measuring 125 square yards, as detailed in the headnote in the plaint was dismissed by the trial Court, vide judgment and decree dated 19.11.1985. The appeal filed by the plaintiffs was also dismissed by the 1st Appellate Court, vide judgment and decree dated 18.04.1992 challenging the said judgments and decrees, the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918.

2. Brief facts of the case are that the plaintiffs had filed a suit for possession of land measuring measuring 125 sq. yards bounded as under:-



South : Samrala Road

West : International Woollen Mills

North : International Woollen Mills

East : House of Malkiat Singh s/o Santa Singh, shown

red in the plan attached and comprised in khasra No.5//12/1/1, 5//12/1/2, Khewat No.1484, Khatauni No.1518 situated in village Sherpur Tehsil and District Ludhiana, as per the jamabandi for the year 1978-79, after removing the super structure of one room measuring 8' x 10' – 3” and boundary wall.

3. It was the case of the plaintiffs that the land measuring 80 kanals 5 marlas was purchased by M/s Prabhat Woollen Mills and International Woollen Mills (plaintiff No.1) from Som Raj and others, vide sale deed dated 24.08.1959 and that thereafter, M/s Prabhat Woollen Mills, vide sale deed dated 04.08.1968, sold land measuring 19 kanals 14 marlas, out of their 1/2 share to plaintiff No.1. It was further the case of the plaintiffs that Brij Lal and defendant Nos.2 and 3 were the partners of M/s International Woollen Mills and by a family arrangement dated 01.02.1973, the property was divided between Brij Lal, Shadi Lal and Sham Lal and thus, Brij Lal (plaintiff No.2) became owner of land comprised in Khasra Nos.5//12/1/1 and 5//12/1/2 besides other land and that the said Brij Lal reconstituted the firm International Woollen Mills (plaintiff No.1/appellant) and the abovesaid land was invested as capital in the aforesaid firm and the said firm became the owner of the property/land. It is further the case of the plaintiffs that on 11.09.1981, defendant No.1 had taken the possession of an area measuring 125 sq.



yards, which has been detailed in the headnote of the plaint and had built a kotha and a boundary wall illegally thereon and stacked some fire wood in the same. It was also pleaded in the amended plaint that defendant No.1 had taken forcible possession of the land in question in spite of the protest of Brij Lal. On the basis of the said averments, the suit for possession was filed.

4. Defendant No.1 filed written statement to the said amended plaint and had stated in the preliminary objections that the plaintiffs had no right, title or interest in the suit property and that the plaintiffs had no right to file the suit through Brij Lal as Brij Lal had earlier filed a similar type of suit in his personal capacity alleging him to be the owner of the property in dispute in the Court of Sh. G.S. Sewak, Sub Judge, 1st Class, Ludhiana and the said suit had been dismissed as withdrawn. It was pleaded that the plaintiffs were estopped by their act and conduct to file the present suit as neither the plaintiffs nor their alleged predecessor ever objected to the construction being raised by defendant No.1 over the suit property. It was denied in the written statement that the land measuring 80 kanals 5 marlas was purchased by M/s Parbhat Woollen Mills and M/s International Woollen Mills. Even the pleadings with respect to sale deed dated 04.08.1968 or the fact that the said Brij Lal and defendants No.2 and 3 were partners of International Woollen Mills or that there was any family arrangement dated 01.02.1973, were also denied. All aspects pleaded in the plaint were specifically denied. Further, it was specifically pleaded that the suit land which was measuring 125 sq. yards and was stated to be in possession of defendant No.1 and on which defendant No.1



had raised construction, was comprised in Khasra No.5//12/1/1 and 5//12/1/2 and that the property which was actually in occupation of defendant No.1 had no concern with the said Khasra numbers as defendant No.1 was in occupation of the property situated in village Jamalpur Awana which had been shown as red in the site plan attached with the written statement and that defendant No.1 was in occupation of the same for the last several years. It was pleaded that in the earlier suit filed by defendant No.1 against defendants No.2 and 3, who are brothers of Brij Lal, the defendants therein had taken a plea that the possession of the property in dispute was taken by defendant No.1 in the month of March, 1979 and thus, the pleas raised by the plaintiffs in the present case and those raised by the brother of plaintiff No.2 in the other case are contradictory. It was also pleaded that defendant No.1 has been doing his business of coal and wood in the property in question, in the name and style of M/s Suresh Coal Depot initially as sole proprietor and in the year 1979, the name of the said firm was changed from Suresh Coal Depot to M/s Malhotra & Malhotra Enterprises and the copies of certain bills of sale and purchase of wood in the name of Suresh Coal Depot were attached along with the written statement. It was pleaded that the permission to construct a pucca boundary wall had been granted by the Municipal Committee on 12.03.1979 on the application of the defendant dated 22.02.1979 and the said property was also assessed to house tax, which defendant No.1 was paying and that the Municipal Corporation had allotted the property No.B.XXXI.381 to the property in question and that the property which was in occupation of defendant No.1 was not



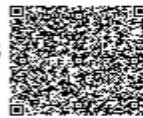
comprised in the khasra which had been mentioned in the plaint.

A perusal of the said pleadings shows that defendant No.1 had denied the factum of the ownership of the plaintiffs with respect to the khasra numbers in question and had also denied the fact that the construction raised by defendant No.1 was in the khasra numbers as mentioned in the plaint.

5. Replication was filed to the written statement of defendant No.1. In para 3 of the preliminary objections, it was stated that the construction was carried out in the absence of the plaintiffs. Importantly, in para No.3 of the replication on merits, it was specifically stated by the plaintiffs that defendant No.1 had taken possession of the land measuring 125 sq. yards out of khasra No.5//12/1/1 and the same was taken on 11.08.1981. It was pleaded that any permission granted by the Municipal Committee was not binding on the plaintiffs.

6. The trial Court had framed the following issues:-

- “1. Whether the plaintiff is partnership concern and Shri Brij Lal is one of its registered partners?OPP*
- 2. Whether the plaintiffs are owners of the property in dispute?OPP*
- 3. Whether the suit is bad for mis-joinder of necessary parties?OPD*
- 4. Whether the plaintiffs are entitled to the relief of possession of the property in dispute?OPP*
- 5. Whether the plaintiffs are barred by their act and conduct from filing the present suit?OPD*
- 5-A) Whether the plaintiffs are estopped by their own act and conduct to file the present suit as provided in preliminary objection 3?OPD.*



6. *Relief.”*

7. Issue Nos.2 and 4 which were the most relevant issues were decided against the plaintiff and in favour of defendant No.1. Other issues were however decided in favour of the plaintiff and against defendant No.1. On the basis of the findings on issue Nos.2 and 4, the suit of the plaintiff was dismissed vide judgment and decree dated 19.11.1985.

8. The plaintiffs filed an appeal against the said judgment and decree dated 19.11.1985. Defendant No.1 had also filed cross objections. The First Appellate Court vide judgment dated 18.04.1992 dismissed the appeal as well as the cross objections filed by the plaintiffs as well as defendant No.1 respectively. Aggrieved against the concurrent findings of fact, the plaintiff No.1 has filed the present Regular Second Appeal.

9. It would be relevant to note that defendant Nos.2 and 3 are not the contesting parties. In spite of due service, no one has appeared on behalf of respondent Nos.2 and 3 in the present appeal.

10. Learned senior counsel for the appellant has submitted that in the present case, as per jamabandi for the year 1978-79, which has been duly exhibited as 'PX', Brij Ram, Shadi Ram and Sham Lal sons of Dhani Ram are shown to be having equal shares with respect to rectangle No.5//12/1/1 measuring 0 kanal 15 marlas. It is further submitted that the entry with respect to rectangle No.5//12/1/2, measuring 0 kanal 3 marlas would show that Prabhat Woollen Mills, Ludhiana has half share and with respect to the other half share, it had been mentioned that “*Baqi Badastur*” i.e. “as usual/as formerly”. It is submitted that '*Baqi Badastur*' would mean that the half share is of the persons who have been shown in the



earlier entries i.e. Brij Lal, Shadi Ram and Sham Lal. It is stated that since presumption of truth is attached to the jamabandis, thus, it is *prima facie* proved on record that the said Brij Lal, Shadi Ram and Sham Lal and M/s Prabhat Woollen Mills are co-sharers in the suit land. It is further stated that since Brij Lal is also one of the co-sharers, it cannot be said that Brij Lal has no right over the property in question. It is thus submitted that the finding of both the Courts with respect to the factum of ownership is illegal and deserves to be set aside. It is further submitted that as far as the issue with respect to demarcation is concerned, as per the report of the Local Commissioner, which fact has been recorded in the impugned judgments, the defendant/respondent is recorded to be in possession of 45 square yards of land in khasra No.5//12/1/1 and thus, the suit land of the present appellant/plaintiff to the said extent at least should have been decreed. It is argued that in the present case, the demarcation had been carried out by the Local Commissioner only with respect to khasra No.5//12/1/1 and had not been done with respect to khasra No.5//12/1/2 and it is thus submitted that in case the Local Commissioner had carried out the demarcation of both the said khasra numbers, then, the suit could have been effectively decided in favour of the present appellant. It is further argued that the appellant has filed an application i.e. CM-8526-C-2023 under Section 151 CPC to appoint a Senior Revenue Officer at Ludhiana to visit the property in dispute and submit his report as the original report Ex.PW3/1 is not available in the photocopy of the record. It is prayed that on account of the above-said arguments, the impugned judgments of the trial Court as well as the First Appellate Court deserve to



be set aside and the suit of the plaintiff deserves to be decreed or in the alternative at least, a fresh report by the Local Commissioner deserves to be called for.

11. Learned Senior counsel for respondent No.1, on the other hand, has vehemently opposed the present appeal and has submitted that the pleaded case of the plaintiff was that M/s Prabhat Woollen Mills and International Woollen Mills had purchased 80 kanals 5 marlas from Som Raj and others vide alleged sale deed dated 24.08.1959, but the said sale deed has not been produced on record and thus, an adverse inference should be drawn against the present appellant. It is further the case of the appellant/plaintiff that M/s Prabhat Woollen Mills had vide alleged sale deed dated 04.08.1968 sold land measuring 19 kanals 14 marals out of their half share to M/s International Woollen Mills in 1968. It is submitted that a perusal of the sale deed shows that khasra number 5//12/1/1 does not figure in the said sale deed. It is further submitted that the third document which has been relied upon by the plaintiff in order to show his ownership is the family arrangement dated 01.02.1973 and in the said family arrangement there is no mention of both the khasra numbers as mentioned in the plaint and thus, it is not even remotely shown that either of the plaintiffs were owners of the khasra numbers, which as per the plaintiff corresponded to the land on which defendant No.1 had carried out the construction. It is argued that even the further case of the plaintiff to the effect that plaintiff No.2/Brij Lal had reconstituted the plaintiff No.1 firm and had given the said khasra numbers and possession of the said khasra numbers in favour of the said firm and it is the firm who had



become the owner of the property is not even remotely shown from any document. It is submitted that even in the partnership deed, which has been produced on record, no reference has been made to any khasra number. It is stated that the present appeal has been filed only by the firm who had absolutely no right in the land corresponding to the khasra numbers mentioned in the plaint. It is further stated that in para 3 of the replication on merits, it has been specifically averred that defendant No.1 had taken possession of land measuring 125 sq. yards, out of khasra No.5//12/1/1 and that the said possession was taken on 11.08.1981. It is submitted that it is thus apparent that the plaintiff had limited the case of the defendant No.1 having taken possession of the property from the said khasra number and not from the other khasra numbers which as per the case of the plaintiff was in their ownership. It is argued that even in the grounds of appeal before the First Appellate Court, reference has been made only to the said khasra number i.e. 5//12/1/1 and not to the other khasra number and it is for the said reason that the present appellant had got the Local Commissioner appointed for the purpose of demarcation of only khasra No.5//12/1/1 and not regarding the other khasra number. It is further argued that in the entire proceedings before the trial Court, the plaintiff had never made any prayer for appointment of a second Local Commissioner and it is only after having suffered both the judgments and decrees and after a period of more than 30 years of the pendency of the present appeal in this Court that an application has been filed for appointment of a fresh Local Commissioner. It is submitted that the entire matter cannot be reopened after a period of 40 years of the filing of the



suit, more so after there being a concurrent finding of fact against the present appellant. It is stated that the plaintiff had to exercise due diligence and thus it cannot take benefit of its own lapses and in case, the plea with respect to the appointment of a second Local Commissioner of the appellant is accepted, then, the same would result in a *de novo* trial. It is further stated that both the Courts in the impugned judgments had concurrently, after making a reference to the cross-examination of PW-3 Local Commissioner, come to a conclusion that there was no encroachment much less construction of defendant No.1 in khasra No.5//12/1/1. It is stated that as per the cross-examination of PW-3, the khasra No.5//12/1/1 ends at point “D” in the site plan Ex.PW3/D and total length of the said khasra is 11 karams and at point “D”, the aforesaid khasra number ends and there is construction of the defendant No.1 beyond the point “D” as per site plan Ex.PW3/D. It is further submitted that a copy of the said site plan (Ex.PW3/D) is available on record and a perusal of the same clearly shows that the finding of the Courts is in accordance with law and does not call for any interference. With respect to the jamabandi, which has been relied upon by learned senior counsel for the appellant, it is submitted that the entry of the said jamabadi has not been properly construed and even in case the best case of the appellant is taken into consideration, then also, the said jamabandi at best could reflect that Brij Lal was the owner of some share in one of the khasra numbers and it is not the present appellant i.e. firm which has got any right in the land in question. It is further submitted that the possession in the said jamabandi is shown to be of Rattan Singh. It is stated that there is no plea



on behalf of the plaintiff to explain as to in what capacity the said Rattan Singh was in possession and in case, Rattan Singh was in possession, as to how and when the possession was taken by defendant No.1 from the said Rattan Singh.

12. This Court has considered the arguments raised on behalf of learned Senior Counsel for the appellant as well as learned Senior Counsel for defendant No.1 and also perused the paper book and is of the opinion that the present appeal deserves to be dismissed for the reasons detailed hereinafter.

13. A perusal of the judgment of the trial Court as well as of the First Appellate Court would show that both the Courts have decided issues No.2 and 4 against the present appellant on account of the following factors:-

- i) Sale deed dated 24.08.1959, which as per the case of the plaintiff was with respect to the purchase of land measuring 80 kanals 5 marlas by the present appellant and M/s Parbhat Woollen Mills, had not been produced on record.
- ii) Sale deed dated 04.08.1968, which as per the case of the plaintiff was executed by M/s Parbhat Woollen Mills in favour of the present appellant was not with respect to khasra No.5//12/1/1 and thus the said khasra number was not shown to be in the ownership of the present appellant whereas the specific plea taken in para 3 of the replication as well as in memorandum of appeal before the First Appellate Court was that the defendants had taken forcible possession of the land comprised in the said khasra number.



- iii) In the family settlement dated 01.02.1973 propounded by the plaintiff vide which it was the case of the plaintiff that the property had been divided between Brij Lal, Shadi Lal and Sham Lal and that Brij Lal had become owner of khasra Nos.5//12/1/1 and 5//12/1/2 and had become owner regarding the same would also not be remotely substantiated as in the said family settlement, there is no reference to the said khasra numbers. It was further found that even site plan attached along with the said family settlement had not been produced on record to even remotely show as to, which part of the land had come to the share of Brij Lal.
- iv) It was found that even in the partnership deed dated 12.10.1981 Ex.P1, no reference was made to the khasra Nos.5//12/1/1 and 5//12/1/2 and thus, the plea taken by the plaintiff to the effect that the property had been invested in the appellant-firm was also not proved. The trial Court further observed that there was no document much less account books etc. to show that the land comprised in said khasra numbers was invested in the capital of the present appellant-firm.
- v) Reference was made by the First Appellate Court to the evidence of PW4-Sudarshan Kumar, who was stated to be the attorney of Brij Lal and who had deposed that it was the present appellant-firm which was owner of the suit land although the said aspect has not even remotely been proved. It was also observed that the said Brij Lal had not stepped into the witness box in support of the case of the plaintiff.



- vi) In para 18 of the judgment of the First Appellate Court, the First Appellate Court has taken into consideration the fact that the plaintiff in his replication has only mentioned that defendant No.1 had encroached in khasra No.5//12/1/1 and even in the memorandum of appeal filed by the appellant before the First Appellate Court, prayer was only confined to khasra No.5//12/1/1 and accordingly, even Local Commissioner was appointed to demarcate the said khasra number only. Relevant portion of para 3 of the replication on merits is reproduced hereinbelow:-

*“3. Para 3 of the written statement is denied, while para no.3 of the plaint is reiterated. **Defendant no.1 had taken possession of land measuring 125 sq. yards out of khasra No.5//12/1/1. The illegal possession was taken on 11.8.1981. It is incorrect that the property in possession of the defendant No.1 has no concern with khasra No.5//12/1/1.**”*

Further, ground “1” of the grounds of appeal filed before the First Appellate Court is reproduced hereinbelow:-

“1) That the finding that the property in dispute is outside khasra no.5//12/1/1 is erroneous.”

- vii) With respect to the fact as to whether the present appellant was able to establish that the property in possession of defendant No.1, where defendant No.1 had raised construction, was comprised in khasra No.5//12/1/1 or not, the Courts had observed that even as per the report of the Local Commissioner, possession of defendant No.1 at best could be stated to be on 45 square yards in the said khasra number. However, the evidence of PW3-Gurbaksh Singh, Retired Kanungo was carefully perused by both the Courts and on the basis



of the said evidence, it was found that the construction raised by defendant No.1 was not comprised in khasra No.5//12/1/1. It was observed that said PW3 had admitted that length of khasra No.5//12/1/1 on the southern side was 11 karams and even as per the report of the Local Commissioner, length of the said khasra number was stated to be 11 karams and that as per the site plan Ex.PW3/2 (which is available on record), length of portion from E to D was 11 karams and some feets and possession/construction raised by defendant No.1 was clearly beyond point D and was thus, clearly outside khasra No.5//12/1/1. It was observed that there was no evidence on record to prove the alleged encroachment of defendant No.1. A perusal of Ex.PW3/2 which is the site plan prepared by the Local Commissioner and is available on record would show that finding of both the Courts on the said aspect is in accordance with the record and the same has not been shown to be perverse or against law.

viii) The First Appellate Court in para 21 of the judgment in addition to the above observations had observed that as per the report, Local Commissioner had started his demarcation from Village Jamalpur Awana as admitted by him and had further admitted that he had not been able to find out any pacca point in Village Sherpur Kalan and thus, the said demarcation report would not further the case of the present appellant, on whom was the onus to prove issue Nos.2 and 4.

ix) In para 22 of the judgment, the First Appellate Court had observed



that even the plea of the present appellant with respect to taking of forcible possession of the suit land by the defendants was found to be contradictory as it was alleged in para 3 of the plaint that forcible possession of the suit land had taken place in the year 1981 whereas PW4-Sudarshan Kumar, attorney of Brij lal had admitted in his cross-examination that defendant No.1 had taken the possession of the suit land in the year 1979.

- x) With respect to jamabandi Ex.PX of the year 1978-79, it was observed by the First Appellate Court in para 19 of the judgment that one Rattan Singh son of Phuman Singh was shown to be in possession, in the cultivation column with respect to khasra No.5//12/1/1 and no plea had been raised in the plaint to explain as to how the said Rattan Singh was shown to be in possession whereas it is the case of the plaintiff more so in para 3 of the plaint that defendant No.1 had taken forcible possession despite protest of Brij Lal on 11.09.1981. Since no plea has been raised in the plaint to explain the possession of Rattan Singh thus, even the said jamabandi would not further the case of the present appellant. It was observed by the First Appellate Court that even in the khasra girdawri Ex.PZ, the said Rattan Singh has been shown to be gair marusi tenant in possession of khasra No.5//12/1/1.

14. From the abovesaid facts, it is apparent that the Courts had minutely examined the evidence and documents on record as well as the pleadings of the parties and had decided issue Nos.2 and 4 against the present appellant. The said findings are not shown to be perverse or illegal



more so on the aspects which have been highlighted hereinabove and thus, would not call for any interference.

15. It would be relevant to note that defendant No.1 even as per the case of the plaintiff is now in possession of the said 125 square yards for a period of more than 43 years i.e. since 1981, as has been stated in para 3 of the plaint. The possession of defendant No.1 is prima facie shown to be even prior to the said period as has been admitted by PW4 in his cross-examination which fact has been highlighted hereinabove and also as per the observations made by the Courts with respect to the permission sought from Municipal Corporation which is stated to be of the year 1979. Moreover, a perusal of Ex.D2 which is stated to be the Assessment Register of the year 1981-82 would show that the property which is stated to be in possession of defendant No.1 is stated to be bearing number B-XXXI. It was for the present appellant to prove that the property which was bounded as per the site plan produced by the plaintiff and was stated to be in possession of defendant No.1 was comprised under khasra number as stated in the pleadings and it was further for it to prove that the present appellant was owner of the same. It is apparent that on both the fronts, the present appellant has not been able to prove its case. The Courts had duly considered the evidence of PW3 who is the Retired Kanungo and had come to the conclusion that the property which was in possession of defendant No.1 was not comprised in khasra No.5//12/1/1 and was beyond the said khasra number. It has not been shown to this Court that the evidence of said PW3 or any other evidence or documents have been misread or misconstrued resulting in a perverse finding. The



sole reliance sought to be placed by the appellant on the jamabandi Ex.PX which is of the year 1978-79 would also not further the case of the present appellant inasmuch as with respect to the khasra number in question in the said jamabandi i.e. khasra No.5//12/1/1, in the cultivation column, one Rattan Singh has been shown to be in possession and not defendant No.1 and there is no pleading in the plaint with respect to the possession of Rattan Singh whereas in para 3 of the plaint, it is the specific case of the plaintiff that the possession was taken by defendant No.1 forcibly in spite of the protest of Brij Lal on 11.09.1981. Reference in this regard can be made to para 3 of the plaint, relevant portion of which is reproduced hereinbelow:-

*“However, after dismissal of the suit **the defendants took forcible possession inspite of the protest of Sh. Brij Lal.**”*

16. Even with respect to the aspect of ownership, it would be relevant to note that the present appeal had been filed by the firm M/s International Woollen Mills. There is nothing on record to show that the property comprised in the khasra number as mentioned in the plaint, was vested in the said firm. The partnership deed dated 12.10.1981 Ex.P1 does not make any reference to either of the two khasra numbers. Moreover, the most relevant document i.e. the sale deed dated 24.08.1959 vide which, as per the case of the plaintiff, the present appellant along with one M/s Parbhat Woollen Mills had purchased the land measuring 80 kanals 5 marlas which as per their case also included the khasra number as mentioned in the plaint, has not been produced on record and thus, the best evidence has not been produced. Even sale deed dated 04.08.1968 does not make any reference to khasra No.5//12/1/1 and the family



settlement dated 01.02.1973 also does not make any mention of the said khasra number. Moreover, the site plan along with the said family settlement has not been produced. Thus, the finding on issue Nos.2 and 4 of the trial Court as well as the First Appellate Court is in accordance with law and does not call for any interference.

17. An application bearing No.CM-8526-C-2023 filed by the present appellant for appointment of a second Local Commissioner cannot be allowed at this stage. In reply to the said application, defendant No.1 has stated that the said application has been moved on 12.07.2023 i.e. after a period of more than 30 years even from the date of filing of the Regular Second Appeal and that too at the stage of final arguments. It is further stated that there is no provision in the High Court Rules and Orders by which fresh evidence can be led at such a belated stage. This Court is also of the opinion that the said application cannot be allowed as the same would result in a retrial. Since, it was for the plaintiff to prove issue Nos.2 and 4 which were material issues, thus, it was incumbent upon him to have led evidence in support of the same. Even in case the plaintiff was not satisfied with the report of the Local Commissioner, necessary steps had to be taken by the plaintiff-appellant during the course of the trial. The suit was instituted in the year 1983 and thus, no ground is made out for allowing the present application. It would also be relevant to note that although the report of the Local Commissioner is not on record but the site plan Ex.PW3/2 which is the most relevant document, is on record and the said site plan clearly establishes that the findings of both the Courts are in accordance with law. Moreover, evidence of PW3 who was



the Local Commissioner, has also been considered by the Courts in right earnest. The same has not been shown to be perverse in any manner. Allowing the said application would also render the said exercise nugatory.

18. No questions of law much less substantial questions of law arise in the present case and the present appeal being meritless deserves to be dismissed and the judgment of the trial Court dated 19.11.1985 and judgment of the Appellate Court dated 18.04.1992 being well reasoned and in accordance with law, deserve to be upheld. Accordingly, the present Regular Second Appeal is dismissed.

19. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

August 12, 2024
naresh.k/pawan

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No