



112

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

RSA-2092-2019 (O&M)

Date of Decision : 18.11.2025

HARPAL SINGH

.... Appellant

VERSUS

RAMESH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Kumar Yadav, Advocate and
Ms. Sangeeta Yadav, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

CM-5682-C-2019

1. This is an application for condonation of delay of 22 days in filing the appeal.

2. For the reasons stated in the application, the same is allowed and the delay of 22 days in filing the appeal is condoned.

RSA-2092-2019

3. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 30.01.2015 passed by the learned Trial Court and dated 30.10.2018 passed by the learned First Appellate Court.

4. Briefly stated, the facts relevant to the present *lis* are that the plaintiff-appellant herein filed the present suit for possession qua suit land fully described in the plaint. Further relief of permanent injunction was also

sought. It was the case set up by the plaintiff-appellant that he was owner in possession of the suit land as fully described in the plaint as per the entries in the jamabandi for the year 2003-04. It was further averred that adjacent to the suit land, the property of the defendant-respondents existed in which they had constructed their residential houses. It was averred that the defendant-respondents were going to encroach on the land of the plaintiff-appellant. It was further the averment made in the plaint that by taking undue advantage of the absence of the plaintiff-appellant in the month of November 2007, the defendant-respondents forcibly constructed their houses after encroaching the suit land. It was the case set up that the defendant-respondents No.1 to 3 had encroached 5 Marla, 4 Marla and 5 Marla land, respectively, of the plaintiff-appellant, by raising construction. It was further averred that the plaintiff-appellant had moved an application before the Naib Tehsildar for demarcation of the suit land and the Naib Tehsildar appointed a Local Commissioner for demarcation of the suit land. On 18.11.2007 demarcation was conducted. In the Local Commissioner's report, it was stated that the defendant-respondents had encroached upon the suit land to the extent as earlier mentioned. Hence, the suit.

5. Defendant-respondents No.1 and 2(a) filed their joint written statement raising preliminary objections of maintainability, limitation, estoppel, *locus standi* etc. On merits it was stated that the plaintiff-appellant was neither owner nor in possession of the suit land. It was further the case set up that there were pucca houses on the suit land, hence, question of cultivating the same did not arise. It was averred that the answering defendant-

respondents had raised construction of the houses on the suit land in their possession in the year 1981 and since then they are in continuous possession over it. It was averred that the defendant-respondents have obtained water and electricity connection and their ration cards also pertain to the same address as the land in dispute. Even Chulha Tax was being paid which showed that the plaintiff-appellant was never in possession of the suit land. It was further the case that 3 Marla land each was allotted to the defendant-respondents under the Government Policy and a sale certificate was also issued in their name. The Local Commissioner's report was denied and it was stated that the same was not conducted in the presence of the parties. Defendant-respondent No.3 filed a separate written statement raising similar pleas.

6. Replication was filed reiterating the averments made in the plaint and denying those of the written statements. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree for possession of the suit land as alleged in the plaint ? OPP
2. If issue No.1 is proved, whether the defendants be restrained not to raise construction over the suit land ? OPP
3. Whether the defendants be restrained not to interfere in the ownership, possession and use of the plaintiff over the suit land ? OPP
4. Whether the present suit is not maintainable in the present form ? OPD

5. Whether the plaintiff has no cause of action and *locus standi* to file the present suit ? OPD

6. Whether the present suit is bad for non joinder and mis-joinder of necessary parties ? OPD

7. Relief.

7. The Trial Court dismissed the suit vide judgment and decree dated 30.01.2015. Aggrieved by the same an appeal was preferred by the plaintiff-appellant before the learned First Appellate Court which appeal was also dismissed vide judgment and decree dated 30.10.2018. Hence, the present regular second appeal by the plaintiff-appellant.

8. Learned counsel for the plaintiff-appellant would contend that there was a Local Commissioner's report which clearly showed that the defendant-respondents had encroached upon the suit land. It is further the contention of the learned counsel for the plaintiff-appellant that both the Courts have erred in dismissing the suit of the plaintiff-appellant.

9. Heard.

10. In the present case the plaintiff-appellant had approached the Court seeking possession of the suit land on the ground that the same had been encroached upon by the defendant-respondents. The plaintiff-respondent in order to prove his case had relied upon the demarcation report dated 18.11.2007 (Ex.PW3/A). It was concurrently found by both the Courts concerned that the said demarcation report prepared by the Local Commissioner was not prepared in the presence of both the parties. Further still, the plaintiff-appellant himself, during his cross-examination, admitted

that no notice was issued by the Local Commissioner prior to conducting the demarcation. Even the witness of the Local Commissioner's report (Ex.PW3/A) admitted that no notice was annexed with the inspection report. The entire case of the plaintiff-appellant was only based on the demarcation report (Ex.PW3/A) which was prepared by Om Parkash Yadav, Field Kanoongo. The said report was not found to have been prepared in accordance with the norms prescribed under Chapter 1-M of the High Court Rules and Orders and the instructions issued by the Finance Commissioner from time to time. In the absence of any cogent and reliable evidence having been led by the plaintiff-appellant to prove that the defendant-respondents had encroached upon the suit land, no fault can be found with the impugned judgments and decrees.

11. No question of law, much less any substantial question of law, arises in the present regular second appeal. This Court does not find any ground to interfere with the concurrent findings of fact recorded by both the Courts concerned. In view thereof, the present regular second appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.11.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No