



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
205

Date of decision: 27.11.2025

RSA-2810-2000(O&M)

Harjap Singh

...Appellant(s)

Vs.

Avtar Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Anupam, Advocate
for the appellant.

Mr. Vijay Lath, Advocate
for respondents No.1, 2 & 4 to 9.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the Id. Courts below whereby suit filed by the plaintiffs/respondents, for permanent injunction restraining the appellant from raising further construction in the suit land and for possession, has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiffs/respondents had filed a suit for permanent injunction restraining the defendants from raising construction permanently; and for possession. It was the case of the plaintiffs that the suit property is ancestral property of the plaintiffs. However, defendant had raised construction over the suit property. When



the plaintiffs had asked him about the illegal construction, the defendant had told that he would remove the same shortly. However, instead of removing the construction, the defendant started threatening plaintiffs that he would raise further construction. Accordingly, the plaintiffs had preferred the present suit on 03.07.1992.

3. Upon appraisal of the pleadings and oral & documentary evidence adduced by the parties, learned Sub-Judge IInd Class, Anandpur Sahib had decreed the suit of the plaintiff vide judgment and decree dated 06.09.1995. Civil Appeal filed by the defendant was dismissed by the learned Additional District Judge, Rupnagar vide judgment and decree dated 25.01.2000. Hence, present Second Appeal by the defendant.

4. It is inter alia submitted by learned counsel for the appellant that the Ld. Courts below have decided solely on the basis of Report of Local Commissioner dated 22.08.1993 stating that the suit property is on Khasra No. 526 and that the Appellant was encroaching on land of the Respondent. The Objections Dated 27.10.1993 filed by Appellant to the Local Commissioner Report were not considered.

5. Further, the Order of Consolidation Officer indicates that Appellant wrongly received less land (0-11) Marla compared to the original holding of Appellant being 0-16 Marla; while Respondent wrongly received more land 0-13 Marla compared to the original holding 0-11 Marla. However, certified copy of Order of Consolidation Officer dated 12.07.1995 was



received on 06.09.1995 and could not be filed before Trial Court in time as the Judgment and decree was passed on 06.09.1995 itself by Ld. Trial Court. The Ld. Appellate Court declined to take copy of Order of Consolidation Officer dated 12.07.1995 as additional evidence.

6. it is submitted that accordingly, grave injustice has been caused to the appellant. It is prayed that the present appeal be allowed and the impugned judgments and decrees be set aside.

7. Per contra, learned counsel for the respondents/plaintiffs opposes the submissions advanced on behalf of the appellant. Learned counsel submits that the Consolidation Report sought to be relied upon by the appellant has not been produced on record by the appellant.

8. It is further submitted that the impugned judgments and decrees suffer from no error, and present appeal deserves to be dismissed.

9. No other argument is made on behalf of the parties.

10. I have heard learned counsel for the parties and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellant/defendant.

11. Perusal of the record of the case shows that plaintiffs were proven to be owners of the suit property from the oral and documentary evidence produced by them. As per Jamabandi for the year 1986-87 (Ex.P2), and the Nishan Dehi Report (Ex.P3) fully corroborates with the statement and case of the plaintiff to the effect that he is owner of the suit property.



Ownership of the plaintiffs over the suit property is also substantiated from the testimony of PW1, PW2 and PW3, all of whom have categorically corroborated each other to the effect that property in dispute belongs to the plaintiff Avtar Singh and no one else.

12. Even the report of Local Commissioner dated 22.08.1993 (Ex.P4) which is signed by both the parties along with other respectables of the locality, proves the case of the plaintiff that he is owner in possession of the suit property. Moreover, as per the Report of the Local Commissioner, the appellant has encroached upon the land of the respondents/plaintiffs. The Local Commissioner who measured the spot at the time of inspection has reported that defendant has encroached upon the land which falls in the share of the plaintiffs. Thus, encroachment of the defendant over the property of the plaintiffs stood proven.

13. It has been contended on behalf of the appellant that suit of the plaintiffs was decreed on the wrong premise that appellant had failed to file objections to the Report of the Local Commissioner. It has been pointed out that defendant had duly filed objections dated 27.10.1993 (at page 116 of the LCR) to the Report of the Local Commissioner dated 22.08.1993 (Ex.P4). In this regard, it is to be appreciated that the appellant had failed to file any objections at the spot. The objections were filed only two months later. Moreover, mere filing of objections is not sufficient in terms of Order 26 Rule 10 CPC; which is as under:-



“10. Procedure of Commissioner. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit.—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters, referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Commissioner may be examined in person.—Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.”

14. Thus, the appellant was also required to make compliance of the conditions of Order 26 Rule 10 CPC and examine the Local Commissioner. It is stipulated in the said provision that party disputing the Local Commissioner Report has to examine the Local Commissioner in order to prove their case. In the present case, admittedly, defendant has failed to examine the Local Commissioner. As such, any belated objections of the appellant to the Report of the Local Commissioner would not be of any help to the appellant.



15. Furthermore, record reveals that defendant has claimed ownership of the suit property by way of adverse possession. First and foremost, the appellant was unable to prove his adverse possession over the suit property. The appellant was unable to prove his hostile possession over the suit property for more than 12 years. The appellant was unable to prove that his title is adverse and hostile to the plaintiffs. Furthermore, claiming ownership over the suit property by adverse possession is implied acknowledgment by the appellant of the ownership of the plaintiff over the suit property.

16. Moreover, the appellant had placed reliance upon certain Agreements (Ex.D1 and Ex.D2) alleged to have been executed between the parties regarding the dispute involved in the present suit. For this reason as well, title of defendant could not be held to be adverse and hostile to the plaintiffs. Even otherwise, the appellant was unable to prove the execution of the said Agreements which have been totally denied by the plaintiffs. Plaintiff has denied his alleged signature over the said Agreements. Admittedly, defendant did not examine any Handwriting Expert to prove the signature of the plaintiff. Even the defendant witnesses failed to prove the authenticity and validity of the alleged Agreements.

17. Before the learned First Appellate Court, the appellant had filed application under Order 41 Rule 27 CPC for leading additional evidence to place on record the Consolidation Report dated 12.07.1995. However,



the said application of the appellant was dismissed by the First Appellate Court as no valid reasons were given by the appellant for not producing the said Report dated 12.07.1995 before the trial Court. Reasoning of the First Appellate Court as contained in Para 10 of judgment dated 25.01.2000 with regard to application for additional evidence of the appellant, is as follows:-

“10. As per Order 41 Rule 27 code of Civil Procedure, 1908 the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary in the Appellate court. But if the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed or the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or any other substantial cause, the appellate court may allow such evidence or document to be produced or witness to be examined. The application filed by respondent No.1 does not fall within the purview of order 41 Rule 27 CPC and hence the application is dismissed. The order now sought to be placed on record was passed during the pendency of the suit but the defendant did not produce the same before the trial court and as such at this stage the application for permission to lead the additional evidence is liable to be dismissed.”



18. Relevant findings of the learned First Appellate Court in Para 20 of the judgment dated 25.01.2000, are as follows:-

“20. Ex. P-2 is the copy of jamabandi for the year 1986-87 as per which khasra No. 526 is owned and possessed by Avtar Singh and Bela Singh in equal shares. Ex. P/5 is copy of the jamabandi for the year 1991-1992 as per which Harjap singh has 4/9th share in khasra No. 525. The possession is described of the owners. Ex. P/3 is the report of the Local commissioner as per which Harjap singh was in possession of site ABCD marked in the site plan in khasra No. 526. The defendant while appearing in the witness box as DW-5 in his cross-examination deposed that the site in dispute bears khasra Number. He did not get the land demarcated before raising construction. His old house was in khasra No. 525. He was present at the spot when the Local Commissioner had demarcated the suit land. As per report the suit property was within khasra No. 526. No written objection was filed by him at the spot. His lawyer had also not filed any written objection. He did not have any connection with khasra No 526 and it was owned by Avtar Singh and Bela singh. He had obtained the electricity connection in the year 1991. Thus, from the evidence on record it transpires that the plaintiffs are owners in possession of khasra No. 526 whereas defendant has some share in khasra No. 525. The stand of the plaintiffs that the defendant has encroached upon khasra No. 526 is corroborated by the report of the Local Commissioner Ex. P/3. The report of the local Commissioner was made in the presence of the defendant. Ex. P/4 memo. of attendances is signed by Harjap Singh defendant. Avatar Singh has also signed the said memo. There are



signatures of other persons also on the said memo. The defendant has not filed any objection regarding the report of the Local Commissioner and as such the report of the Local Commissioner is relevant and can be safely relied upon. The defendant has placed reliance on agreement Ex. D-1 and Ex. D-2. The plaintiffs have denied that the said agreements had been executed between the parties. The defendant should have got the signatures of Avtar Singh compared from some hand writing expert to support his plea that the said documents had been executed by the plaintiffs. In these documents the khasra numbers are not mentioned. These documents fail to establish that the encroached area had already been constructed when the agreements were executed as the khasra numbers are not mentioned in the said documents. These documents could have been executed between the parties when old construction had been raised by the defendant because the defendant in his cross-examination had deposed that their old house was in khasra No. 525. There is no expert evidence on record with regard to the age of the construction of the encroached area. Thus the agreements Ex. D.1 and Ex. D-2 fail to prove that the construction in dispute had been raised in the year 1969 and 1975. In this view of the matter the trial court had rightly held that the suit of the plaintiffs was within limitation and the defendant had encroached upon the land owned by the plaintiffs. The defendant had failed to prove that they had become owners by way of adverse possession as they could not prove their possession over the suit property for more than 12 years. The



impugned judgment and decree of the trial court do not call for any interference.”

19. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. In view of the above, present appeal is **dismissed**.

20. Pending application(s) if any also stand(s) disposed of.

27.11.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No