



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

RSA-2743-1999 (O&M)
Reserved on :- 19.09.2025
Pronounced on :-25.09.2025

Gori Shankar (Since Deceased) through his LRs

... Appellant

Versus

Hans Ran (Since Deceased) through his LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Rakesh Nagpal, Advocate
for the appellant.

Mr. Sandeep Khunger, Advocate with
Ms. Sudrishti, Advocate and
Ms. Srishti, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The appellant-defendant has filed this Regular Second Appeal (for short to be referred as 'RSA') challenging the judgment and decree passed by the learned Additional District Judge, Hisar, contending that a serious error was committed while deciding Issue No.1. It is submitted that the Local Commission's report had clearly indicated that there was no encroachment on Plot No.12. Despite this, the learned Additional District Judge deviated from the issue at hand and proceeded to determine the ownership of the vacant land measuring 20'x25' situated between the parties' plots. The ownership of this intervening vacant land was never a matter in



dispute before the Court, and the determination thereof was entirely unnecessary and totally uncalled for.

2. Factual backdrop of the present case is that the respondent-plaintiff filed a suit seeking a mandatory injunction, directing the defendant to remove the alleged encroachment on a portion of Plot No.12, which is owned by the plaintiff. The suit was initially decreed by the learned Sub-Judge, 1st Class, Fatehabad, vide judgment and decree dated 02.06.1992. Subsequently, the learned Additional District Judge, Hisar, allowed the appeal, set aside the said judgment and decree, and remanded the matter for determination of whether any portion of Plot No.12 had, in fact, been encroached upon. According to the plaintiff, he purchased a half share in Plot No.12 vide an agreement dated 05.03.1994 from Bhagwan Dass, took possession of two marlas of land, and constructed a house thereon. He left a vacant strip measuring approximately 4 to 5 feet for personal use. It is alleged that the defendant encroached upon this vacant portion by erecting a barbed wire around it.

3. The defendant contested the suit by denying both the title and possession of the plaintiff over Plot No.12. He contended that he is the lawful owner of Plot No.573, which adjoins Plot No.12, and asserted that he had, for the past approximately fifteen years, constructed a boundary wall measuring five feet in height and twenty-five feet in length along the western side of his plot, thereby demarcating and separating the two properties.

4. After reviewing the pleadings, the Court framed the following issues to adjudicate the parties' disputes:-



1. Whether the plaintiff is entitled to the relief of mandatory injunction as alleged? OPP
2. Whether the plaintiff has got no locus- standi to file the present Suit? OPD
3. Whether the Suit is not maintainable in 3. the present form?OPD
4. Whether the plaintiff has got no cause of action to file the present suit OPD
5. Whether the suit is bad for not affixing the scaled site plan?OPD
6. Whether the defendant is entitled special costs U/s 35-A CPC? OPD
7. Relief.

5. Both parties were provided ample opportunity to adduce evidence in support of their respective claims and defenses. Upon the conclusion of the evidentiary proceedings and after hearing the learned counsel for the parties at length, the learned Sub-Judge, 1st Class, Fatehabad, dismissed the suit. Aggrieved by this decision, the plaintiff preferred an appeal before the learned Additional District Judge, Hisar, who, upon careful consideration of the record and submissions, allowed the appeal, decreed the suit in favour of the plaintiff, and directed the appellant-defendant to remove the alleged encroachment from the land in question.

6. Challenging the aforementioned judgment and decree, the appellant has preferred the present appeal, which was admitted for hearing. Notice was duly issued to the respondents, who appeared through learned counsel, and the records of the Courts below were requisitioned for detailed examination by this Court.

7. I have heard the learned counsel for both parties at length. Their submissions have been carefully considered in the light of the pleadings, the evidence adduced on record, and the findings recorded by the Courts below.



The record has been meticulously scrutinized to evaluate the rival contentions and to ascertain whether any legal infirmity, error, or perversity exists in the impugned judgment and decree that would justify interference in the present appeal.

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel for the appellant contended that the learned Additional District Judge, Hisar, exceeded the scope of the suit by recording a finding that the vacant land lying between the plots of the parties belonged to the respondent-plaintiff. It was argued that there was no evidence to substantiate any encroachment on the plaintiff's plot. The only material before the Court was the report of the Local Commissioner, which explicitly stated that there was no encroachment on Plot No.12. The report further indicated that a vacant area measuring 20'x25' lay between Plot No.12 and Plot No.573. The learned Court below erred in holding that the plaintiff was the owner of this intervening vacant land.



10. Learned counsel for the respondent, on the other hand, contended that there is no illegality or infirmity in the findings recorded by the Court below. He submitted that as per the agreement to sell of Plot No.573 in favor of the appellant-defendant, the said plot is shown as abutting Plot No.12. Consequently, the learned Additional District Judge, Hisar, rightly held that the intervening vacant area forms part of the plaintiff's ownership. It was argued that no interference with the judgment and decree is warranted, and the appeal ought to be dismissed.

11. The only evidence of significance in this case is the report of the Local Commissioner, Kewal Krishan-*Quango*. According to the report, the eastern side of Plot No.12 was found to be short by 1'9". During the demarcation proceedings, Plot No.573, owned by the appellant-defendant, was also surveyed, and it was observed that a vacant area measuring 20'x25' of *Abadi Deh* lay between Plot No.573 and Plot No.12. This indicates that while there is some excess land between the two plots, the shortage in the respondent-plaintiff's plot is limited to 1'9" on the eastern side.

11.1. The learned First Appellate Court, in paragraph 14 of the impugned judgment, held that the respondent-plaintiff would be treated as the owner of the surplus land within *Abadi Deh*. The Court relied upon the judgments in **Kali Saran v. Hari Ram and Another, 1957 PLR 419**, and **Atul v. Bhup Singh Jain and Another, 2002 (2) CWC 456**, which establish that "*where there is a conflict between the property description and its measurements, the boundaries specified in the document are to prevail*".

11.2. In the present case, the suit pertains to a claim for a mandatory injunction, with the respondent-plaintiff alleging encroachment by the



appellant-defendant on Plot No.12. The demarcation revealed a deficiency of only 1'9" on the eastern side of Plot No.12. However, the learned First Appellate Court exceeded the scope of the suit by granting the respondent-plaintiff ownership over the entire vacant area of 20'x25' lying between Plots No.573 and 12, which was never claimed.

11.3. In such situations, when surplus land exists at the end of a plot within *Abadi Deh*, and no claim is made regarding its ownership, the Court should not grant ownership beyond the specific deficiency. Accordingly, the respondent-plaintiff is entitled only to the 1'9" area on the eastern side of Plot No.12, and the appellant-defendant is directed to remove any barbed wire encroaching upon this area. The claim regarding remaining vacant land, measuring the balance of 20'x25', shall remain pending subject to be determination between the village *Panchayat* and the parties.

11.4. Accordingly, the appeal of the appellant-defendant is allowed to the extent indicated above. The judgment and decree of the learned First Appellate Court is hereby modified to the extent that the respondent-plaintiff is recognized as the rightful owner of only the 1'9" portion on the eastern side of Plot No.12, which was found deficient in his possession. The appellant-defendant is directed to remove any barbed wire or obstruction encroaching upon this portion. As regards the question of title over remaining vacant area measuring the balance of 20'x25', ownership is left open for determination, and the parties, along with the Gram Panchayat, may pursue appropriate legal proceedings to ascertain title over that portion. All other aspects of the impugned judgment and decree shall stand as set aside to this extent.



12. In view of the foregoing disposal of the main case, all pending miscellaneous application(s), if any, connected with or arising out of the main proceedings are also disposed of accordingly, and no further orders are required in this regard.

25.09.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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