



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(213)

RSA-4435-1999 (O&M)
Date of Decision:-29.10.2025

Kapoor Singh

... Appellant

Versus

Jag Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Bikram Chaudhary, Advocate
for the appellant.

Mr. Nischal Cheyanya Manchanda, Advocate for
Mr. Jagdish Manchanda, Advocate
for respondent No.1.

Mr. Sunil Goswami, Advocate
for respondent No.2.

VIRINDER AGGARWAL, J. (Oral)

The appellant/defendant, being gravely aggrieved and dissatisfied by the judgment and decree dated 21.07.1999 passed by the learned Additional District Judge (I), Jind in Civil Appeal No. 84 of 16.07.1997, whereby the well-reasoned and judicious judgment and decree dated 11.06.1997 rendered by the learned Civil Judge (Junior Division), Narwana in Civil Suit No. 226 dated 07.04.1994, titled “**Kapoor Singh v. Hardeva and Others,**” was erroneously set aside, most respectfully invokes the appellate and supervisory jurisdiction of this Court under Section 41 of the Punjab Courts Act, 1918, through the present Regular Second Appeal



(for short to be referred as “RSA”). The appellant humbly beseech this Court to restore the lawful and well-merited decree passed by the learned Trial Court and to redress the substantial miscarriage of justice occasioned by the impugned appellate judgment.

1.1 It is further submitted that the impugned judgment and decree are vitiated by manifest illegality, perversity, and a fundamental misdirection in law. The findings recorded therein rest upon a gross misappreciation of evidence and an erroneous application of settled legal principles, thereby culminating in grave and palpable injustice to the appellant. The impugned judgments, being unsustainable in law and equity, warrants interference by this Court. The appellant, therefore, most earnestly pray that this Court be pleased to set aside the impugned judgment and decree and to reinstate the well-reasoned, lawful, and equitable decree passed by the learned Trial Court, in the paramount interest of justice.

2. For the sake of precision and procedural consistency, the parties shall, hereinafter, be referred to according to their respective status before the learned Trial Court, namely, as the *plaintiff* and the *defendants*. The essential facts and background circumstances culminating in the present appeal are succinctly set forth here-in-below for the kind consideration of this Court:-

“The plaintiff has filed the present suit for possession of the suit land as detailed in the plaint. It is averred that plaintiff and defendant set no. 3 are the rightful owners of the said land. The plaintiff had the land demarcated by the ‘*Halka Kanungo*’, and the report along with the encroachment plan is annexed with the



plaint. It is alleged that about six months ago, defendant set no. 1, in connivance with defendants set no. 2, encroached upon the land as per the said report. Despite repeated requests to remove the encroachment and deliver possession to the plaintiff and defendants set No. 3, defendant set No. 1 failed to comply, necessitating the filing of this suit.”

3. Upon issuance of notice of the suit, respondents were duly served. Defendant No. 1 filed a written statement denying the allegations made in the plaint. It was specifically contended that no encroachment was made on any part of the suit land. The defendants further pleaded that a ‘*pacca*’ street had been constructed by the Gram Panchayat about 20 years ago, which now vests in the Panchayat, and hence, the question of encroachment upon a public street does not arise.

4. Upon meticulous consideration of the pleadings, documentary evidence, and the rival submissions advanced by learned counsel for the parties, the Court deems it appropriate to crystallize the following issues for determination, so as to facilitate a comprehensive and judicious adjudication of the respective claims and contentions raised herein:-

1. Whether the plaintiff is owner of the suit property? OPP
2. If issue no. 1 is proved, whether the plaintiff is entitled to possession, if so, to what effect? OPP
3. Relief.

5. Both parties were granted sufficient opportunity to adduce oral and documentary evidence in substantiation of their respective pleadings. Upon the culmination of the trial and after due consideration of the arguments advanced by learned counsel on either side, the learned Civil



Judge (Junior Division), Narwana, proceeded to decree the suit with the observation i.e. *“Suit decreed with costs for possession of 2 kanals 3 marlas (East) in Khasra No. 142 as per Ex. P1 and Ex. P2; decree sheet to follow”*. Aggrieved by the said judgment, the appellant/respondent preferred an appeal before the learned Additional District Judge (I), Jind, which was allowed, thereby reversing the well-reasoned judgment and decree of the learned Trial Court. The learned First Appellate Court, while allowing the appeal, observed that *“appeal of defendant No.2/respondent No.2 (in this Court) allowed with costs; trial court judgment dated 11.06.1997 set aside; plaintiff’s suit dismissed; decree sheet to be prepared.”*

6. Challenging the judgment and decree rendered by the learned First Appellate Court, the appellant has preferred the present appeal, which has been duly admitted. Pursuant to notice, the respondents have entered appearance through their respective counsel. The records of the learned Courts below have been requisitioned for comprehensive scrutiny and adjudication of the matter on merits.

7. I have heard the learned counsel for the parties at length and carefully considered their submissions in the light of the pleadings, evidence, and findings recorded by the learned Courts below. The entire record has been meticulously examined to ascertain *‘whether the impugned judgments and decrees suffer from any legal infirmity, perversity, or jurisdictional error warranting interference by this Court’?*

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 has strenuously contended that the learned First Appellate Court committed a grave error in law by discarding the demarcation report, Ex. P1, solely on the ground that no prior notice had been issued by the '*Halka Kanungo*' before conducting the demarcation proceedings, and that such notice ought to have been served upon the respondents/defendants. It is submitted that this reasoning is legally unsustainable, as the demarcation was undertaken at the instance of the appellant/plaintiff concerning his own property, at a time when no civil litigation was pending and the *Gram Panchayat* was neither a party nor an interested stakeholder. It was only upon completion of the said demarcation that the alleged encroachment by the *Gram Panchayat* upon the appellant's land was revealed. Therefore, the report, being a product of an official and objective measurement process, could not have been discarded merely on hyper-technical or procedural grounds.

10. Per contra, learned counsel for respondent No.2-Gram Panchayat contended that adherence to the principles of natural justice necessitates issuance of prior notice to all affected or interested parties before conducting any demarcation proceedings, more so when the subject



property pertains to a public authority such as the *Gram Panchayat*. It was urged that the learned First Appellate Court rightly held the demarcation report to be “*non est*” in the eyes of law, having been prepared in contravention of procedural fairness and without affording an opportunity of participation to the concerned public body. Consequently, the impugned finding, being well-reasoned and in consonance with settled legal principles, calls for no interference.

11. Having given anxious consideration to the rival submissions, the Court is of the considered view that once the learned First Appellate Court resolved to discard the demarcation report relied upon by the appellant-plaintiff, it became incumbent upon it to ensure an effective and just adjudication of the factual controversy by directing a fresh demarcation through the appointment of a Local Commissioner, after affording due notice and opportunity to both parties. However, the learned Appellate Court, instead of adopting such a course to ascertain the true state of possession and alleged encroachment, summarily rejected the report solely on the ground of absence of notice to the *Gram Panchayat*, thereby leaving the central issue unexamined and the dispute unresolved in substance.

12. In the interest of advancing the ends of justice and ensuring a comprehensive adjudication of the core issue namely, whether any portion of the plaintiff's land has been encroached upon by the respondent-*Gram Panchayat* it is considered just and expedient to direct the appointment of a Local Commissioner to undertake a lawful demarcation of the suit property, strictly in accordance with the prescribed procedure and upon due notice to both parties.



13. In view of the foregoing discussion, the appeal preferred by the appellant–plaintiff stands allowed. Consequently, the judgment and decree rendered by the learned Additional District Judge (I), Jind, is hereby set aside, and the matter is remanded to the said Court for fresh adjudication in accordance with law, with a specific direction to appoint a competent and impartial Local Commissioner to conduct a lawful demarcation of the suit property. The Local Commissioner shall ascertain, upon due notice to both parties, “*whether any encroachment exists upon the plaintiff’s land and, if so, then extent of that encroachment from such demarcation*”?

14. Since the main appeal has been finally adjudicated and disposed of on merits, all pending miscellaneous applications, if any, which are ancillary or incidental to the main case, shall also stand disposed of accordingly. No further orders are required to be passed thereon.

(VIRINDER AGGARWAL)
JUDGE

29.10.2025
Gaurav Sorot

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