

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

2025:PHHC:002358



109

RSA-963-2023 (O&M)

Date of decision: 09.01.2025

Ram Kishan

...Appellant.

Versus

Randhir Singh (since deceased) through his LRs

...Respondent(s).

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**CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

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**Present:** Mr. Vikram Singh Punia, Advocate  
for the appellant.  
(through video conferencing)

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**Sukhvinder Kaur, J.**

The instant Regular Second Appeal has been filed by appellant/  
plaintiff against the concurrent findings recorded by both the Courts below  
vide which the suit of the plaintiff for possession and for grant of *mesne*  
profits was dismissed.

2. Brief facts of the case as per plaint are that plaintiff is owner of  
the land measuring 52 bigha 16 biswas comprised in Khewat No.210,  
Khatoni No.337, as detailed in para No.1 of the plaint, situated at village  
Sanghore, Sub-Tehsil Babain, District Kurukshetra, as per jamabandi for the  
year 2010-11. It has been alleged that defendant is owner of land situated at  
village Ghisarpari, Sub-Tehsil Babain, District Kurukshetra as per  
jamabandi for the year 2007-08. It has been further alleged that in April,  
2011, defendant encroached over a portion of land of plaintiff comprised in

khasra No.1310 (6-3), khewat No.210, khatoni No.337, situated at village Sanghore, Sub-Tehsil Babain, District Kurukshetra out of total land as detailed in para No.1 of the plaint. Demarcation of the encroached land was got conducted by the plaintiff from revenue authorities on 21.05.2013, as per which defendant had illegally encroached over some portion of land as mentioned in Para No.1 of the plaint and is in unauthorized possession thereof to the extent of 15 biswas. It has been alleged that 15 biswas land is the suit land which has been illegally encroached by the defendant. When defendant refused to remove the encroachment and to hand over the actual and physical possession of suit land, the present suit for decree for possession of said land was filed, for delivering the possession of such land and to pay mesne profits for unauthorized use and occupation of the encroached land.

3. Upon notice, defendant appeared and filed written statement by taking preliminary objections regarding maintainability; no locus standi; cause of action; estoppel; suit being not property valued for the purpose of court fee and jurisdiction; plaintiff being guilty of suppressing true and material facts and the civil court having no jurisdiction to entertain the present suit. On merits, it was alleged that there is boundary of two villages namely Village Ghisarpuri and village Sanghore and stones of boundaries have been fixed and no one can change said boundary. No notice was issued to the defendant before demarcation was got conducted by the plaintiff and as such the exparte demarcation was not sustainable. As the demarcation was conducted in the absence and at the back of the defendant, so reliance placed upon the said demarcation by the plaintiff is totally misplaced and

misconceived and has no value in the eyes of law. No encroachment has been made by defendant as alleged by the plaintiff.

4. Then replication was filed by the plaintiff while reiterating the averments made in the plaint and denying the averments made in the written statement.

5. From the pleadings of the parties, the following issues were framed:-

*(i) Whether plaintiff is entitled to decree for possession and for grant of mesne profits, as prayed for? OPP*

*(ii) Whether the suit of the plaintiff is not maintainable and the plaintiff has no locus standi and cause of action to file the present suit? OPD*

*(iii) Whether the plaintiff has concealed the true and material facts from the Court? OPD*

*(iv) Relief.*

5. Thereafter, both the parties led their respective evidence. In order to prove his case, plaintiff examined PW1 Shyam Lal, Retd. Tehsildar, who conducted the demarcation at village Sanghore Sub Tehsil Babain, as per order of Tehsildar Ex.PW1/A, PW2-Balwinder Singh, also supported the version of the plaintiff and plaintiff-Ram Kishan himself stepped into the witness box as PW3 and deposed on oath as per the averments made in the plaint.

Besides the above mentioned witnesses, the following documents were also tendered:-

Ex.P1 Jamabandi for the year 2010-2011

Ex.PW1/A Application for demarcation

Ex.PW1/B Site Plan

Ex.PW1/C Memo of presence

6. To rebut the evidence of the plaintiff, defendant-Randhir Singh himself stepped into the witness box as DW1 and examined DW2 Shyam Singh, Ex. Sarpanch and DW3-Om Parkash, Retd. Naib Tehsildar.

Besides the above mentioned witnesses, the following documents were also tendered:-

|        |                                                   |
|--------|---------------------------------------------------|
| Ex.D1  | Order of Tehsildar regarding demarcation          |
| Ex.D2  | Memo of presence dated 18.02.2015                 |
| Ex.D3  | Memo of presence dated 9.02.2015                  |
| Ex.D4  | Demarcation report submitted by tehsildar         |
| Ex.D5  | Aks Shijra                                        |
| Ex.D6  | Aks Shijra                                        |
| Ex.D7  | Jamabandi for the year 2012-2013                  |
| Ex.D8  | Aks Shijra                                        |
| Ex.D9  | Application for demarcation moved by Rakesh Kumar |
| Ex.D10 | Statement dated 22.05.2014                        |

7. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 20.03.2017. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was also dismissed, vide judgment and decree dated 04.02.203. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff, before this Court.

8. Learned counsel for the appellant/ plaintiff has contended that it has been established on record that defendant is in unauthorized possession over the suit land. Before filing the suit, an application for demarcation was moved by the plaintiff and suit land was demarcated by PW1-Shyam Lal Retd. Tehsildar. As per demarcation report Ex.PW1/A defendant Randhir has encroached upon 15 biswas of land of the plaintiff. He has argued that during pendency of the suit, suit land was again

demarcated by DW3 Om Parkash Retd. Naib Tehsildar, vide order of the Court, but said report cannot be relied upon as demarcation was not conducted properly and this report is suffering from many defects though in this report also it has been mentioned that the land of the plaintiff is less at the spot, yet it has been submitted that defendant had made no encroachment. So from this report also it is proved that plaintiff has less land at the spot. Report of Shyam Lal Retd. Tehsildar corroborates the statement of the plaintiff that encroachment has been made upon land of the plaintiff by the defendant. He has vehemently argued that when land of plaintiff is less at the said location then it itself leads to the irresistible conclusion that the said land has been encroached upon by the defendant, as defendant is having the adjoining land to the land of the plaintiff. He has also urged that as both demarcation reports have not resolved the aforesaid anomaly, thereby it is necessitated to prepare fresh demarcation report of the entire land owned by the plaintiff and defendant, to establish the actual possession of the suit land at the spot and has prayed that the present appeal may be allowed and judgments of Courts below be set aside and suit of the plaintiff/ appellant be decreed.

9. I have heard learned counsel for the appellant and have gone through the record thoroughly.

10. Case set up by the appellant/plaintiff is that in April 2011, his land measuring 15 biswas out of total land as detailed in the plaint had been illegally encroached upon by defendant Randhir Singh. But the request to get his land demarcated was made by the plaintiff only in the year 2013, when demarcation was conducted by DW1-Shyam Lal, Retd. Tehsildar,

Pehowa with the report that defendant had encroached upon 15 biswas land of the plaintiff. It has been rightly pointed out by the Courts below that it has not been explained that what prevented the plaintiff from initiating appropriate demarcation proceedings in April, 2011, itself when the land was allegedly encroached by the defendant/ respondent. There is no material on record in support of the plea of the plaintiff that efforts were being made to amicably resolve the dispute and statement of plaintiff is also silent to that effect. From the demarcation report Ex.PW1/A and from memo of presence Ex.PW1/C, it clearly emerges that no notice was given to defendant/ respondent before conducting of proceedings to demarcate the suit land. Even entire land of the plaintiff/ appellant was not demarcated and only khasra No.1310 (6-3) was demarcated. While appearing as PW1-Shyam Lal, Retd. Tehsildar has admitted in his cross-examination that no notice was served by him to defendant, rather it had been sent by Patwari, so there is nothing on record to prove that notice was duly served upon the defendant and as such the demarcation was conducted without serving notice to the defendant. As such this demarcation report cannot be relied upon.

11. This fact is not disputed that on request of both the parties, Om Parkash, Naib Tehsildar was appointed as Local Commissioner, vide order dated 22.05.2014 of Court, who has been examined as DW3. From the testimony of DW3 Om Parkash, Naib Tehsildar, it is made out that he had issued notice Ex.D1 to both the parties. Demarcation was conducted on 18.02.2015 and 19.02.2015 and memo of appearances of both the dates Ex. D2 and Ex.D3 respectively were prepared. He prepared and submitted the

demarcation report as Ex.D4, as per which 14½ biswas of land owned by plaintiff was found to be less but defendant who was resident of adjoining village Ghisarpari, was not found to be in possession of excess land.

12. No objection was filed by the plaintiff to the demarcation report Ex.D4. Nothing has been pointed out by learned counsel for the appellant/ plaintiff that why the said report cannot be considered and no discrepancies have been pointed out to discard the same. From report Ex.D4, no such inference can be drawn that defendant had encroached over the land of the plaintiff/ appellant.

13. It was incumbent upon the plaintiff to prove the factum of encroachment by leading cogent evidence and when demarcation report Ex.PW1/A cannot be relied upon only oral evidence of the plaintiff is not sufficient to prove that defendant has encroached upon the suit land of the plaintiff.

14. An application for leading additional evidence by way of appointment of Local Commissioner was moved during pendency of the appeal before this Court to prove the factum of encroachment as alleged by the plaintiff. It has been alleged that as plaintiff is in possession of less land as per the demarcation report Ex.D4, so in order to adjudicate the controversy in the present case, a new Local Commissioner be appointed for conducting of the demarcation.

15. As already observed, demarcation was conducted by Shyam Lal Retd. Tehsildar, who had submitted his report Ex.PW1/A, which has not been relied upon due to the reasons as discussed above. Om Parkash Retd. Naib Tehsildar, was appointed as Local Commissioner with the consent of

both the parties on the basis of statements suffered by the parties before learned trial Court. Om Parkash, Naib Tehsildar has submitted his report Ex.D4 as per which no encroachment has been made by defendant over the land of the plaintiff. So as demarcation by DW3 Om Parkash, Naib Tehsildar, who is Revenue Officer, was conducted after due notice and in presence of both the parties as per rules, so no new Local Commissioner is required to be appointed for again conducting the demarcation.

13. For the reasons recorded above, the present Regular Second Appeal fails and is dismissed as it does not raise any question of law much less substantial question of law.

14. All pending applications, if any, also stand disposed of accordingly.

**(SUKHVINDER KAUR)**  
**JUDGE**

**09.01.2025**

*komal*

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|----------------------------|---|---------|
| Whether speaking/ reasoned | : | Yes/ No |
| Whether Reportable         | : | Yes/ No |