

2025:PHHC:174162



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3842 of 2025 (O&M)

Date of Decision: 12.12.2025

Baljit Singh

. . . . Appellant

Vs.

Ramesh Singh & Ors.

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. Impinder Singh Dhaliwal, Advocate
For the appellant.
(through VC)

DEEPAK GUPTA, J.

CM No. 14086-C of 2025

This is an application seeking condonation of delay of 121 days in re-filing the accompanied RSA.

2. For the reasons mentioned in the application, the same is allowed. Delay of 121 days in re-filing the appeal stands condoned.

RSA No. 3842 of 2025

3. The present Regular Second Appeal has been filed by Baljit Singh, the plaintiff in the suit, challenging the concurrent findings of the trial Court and the First Appellate Court. His suit seeking a decree of permanent injunction with respect to an alleged encroachment upon a public passage was dismissed by the trial Court on 16.03.2023, and the appeal preferred by him was dismissed by the First Appellate Court on 24.02.2025.

4. According to the plaintiff, he is the owner of a house situated in Guru Nanak Nagar, Kot Ise Khan. Adjacent to his house lies a passage forming part of Khasra No. 169, measuring 6 kanal 6 marla. He alleged that defendants No. 3 to 5 had encroached upon a portion of this passage, which he attempted to identify in the site plan attached with the plaint. He further

stated that though demarcations had been conducted multiple times by the revenue authorities, the encroachment was not removed.

5. The defendants, however, took the stand that the site plan relied upon by the plaintiff did not depict the actual position existing at the spot. They maintained that the street was in fact 16½ feet wide and was available for use. They further contended that if any encroachment existed, it was on the southern side of the street, where two other individuals, namely Narinderpal Singh and Harjitpal Singh, had raised constructions. According to the defendants, the plaintiff ought to have pursued action against these individuals rather than the present defendants.

6. After examining the pleadings and evidence, the trial Court recorded that the passage in question indisputably falls within Khasra No. 169 and belongs to the Nagar Panchayat, Kot Ise Khan. The plaintiff alleged encroachment by defendants No. 1 to 7 upon portions marked in red and blue in site plan Ex.P1. However, on scrutinizing the evidence, the Court found that the plaintiff had failed to prove the exact width of the street as per the revenue record or the extent to which it may have been encroached upon by the defendants. The demarcation reports dated 20.01.2010 (Ex.PW7/B) and 02.12.2016 (Ex.PW9/A), both relied upon by the plaintiff, did not record any encroachment by the defendants. The Court also noted that the plaintiff himself admitted during cross-examination that the defendants' site plan Ex.D1 correctly depicted the situation at the spot. He further admitted that the defendants had constructed their houses about 30 years earlier, which cast serious doubt upon his claim of recent encroachment.

7. Upon this analysis, the trial Court held that the plaintiff had failed to discharge the initial burden of proof under Section 101 of the Evidence Act, particularly when he could not establish any breach of obligation by the defendants as required under Section 39 of the Specific Relief Act. The suit was accordingly dismissed.

8. The First Appellate Court carefully reappraised the evidence and concurred with the findings of the trial Court. It observed that the plaintiff had failed to prove any specific encroachment despite alleging that the

defendants had raised a platform in front of their houses. Neither the site plan relied upon by the plaintiff nor the demarcation reports supported this allegation. The Appellate Court held that as the burden lay squarely on the plaintiff to prove the encroachment, and he had failed to do so, and so, the appeal deserved dismissal.

9. In the present second appeal, learned counsel for the appellant argued that the Courts below had erred in appreciating the demarcation reports and had wrongly believed the evidence produced by the defendants.

10. However, this Court finds that the findings of both the Courts below are pure findings of fact arising from appreciation of evidence on record. No misreading or misinterpretation of evidence has been shown, nor is there any indication that the Courts ignored any material evidence.

11. Under Section 100 of the Code of Civil Procedure, interference in second appeal is permissible only where a substantial question of law arises. The appellant has not been able to demonstrate any such question. It is well settled that concurrent findings of fact cannot be disturbed in second appeal unless they are perverse or based on no evidence. In the present case, the findings are fully supported by material on record and cannot be reopened merely because a different inference is sought to be drawn.

12. In the absence of any merit, the Regular Second Appeal is accordingly dismissed.

12.12.2025	(DEEPAK GUPTA)
<i>Jiten</i>	JUDGE
<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>