

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

RSA-2027-1990 (O&M)
Reserved on :- 12.02.2026
Date of Pronouncement:-16.02.2026
Uploaded on:-16.2.2026

DALIP SINGH (DECEASED) THROUGH LRs

... Appellants

Versus

TEJA SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Surjti Singh Swaich, Advocate with
Ms. Ishani Goyal, Advocate
for the appellants.

Mr. Sanjay Tangri, Advocate with
Mr. Ayushi, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The appellants–plaintiffs have instituted the present Regular Second Appeal (hereinafter referred to as “RSA”) assailing the judgment and decree dated 18.04.1990 passed by the learned First Appellate Court, whereby the well-reasoned judgment and decree dated 21.08.1986 rendered by the learned Sub-Judge, 2nd Class, Ludhiana, came to be set aside.

2. Succinctly stated, the appellants–plaintiffs had instituted a suit for possession of the suit land, fully detailed and described in the headnote



of the plaint. The case set up by them was that Nain Singh, father of the appellant–plaintiff and defendant No.2, was the owner in possession of land measuring 4 marlas comprised in Khasra No. 432, Khata No. 452/538, as reflected in the Jamabandi for the year 1980–81, situated within the revenue estate of village Seholi. Upon his demise, the plaintiff and defendant No.2 succeeded to the said property in equal shares, i.e., 2 marlas each. Mutation was duly sanctioned on the basis of the Will executed by their father.

2.1. It was further averred that the suit land was thereafter partitioned by mutual arrangement between the brothers, pursuant to which each came into exclusive possession of his respective share, and their possession remained exclusive and uninterrupted. Defendant No.2 is stated to have alienated his share measuring 2 marlas in favour of defendant No.1 by way of sale deed dated 22.02.1983. The grievance of the plaintiff is that defendant No.1, while raising construction over the plot so purchased, encroached upon a portion of the plaintiff's share measuring 20 feet 3 inches by 10 feet 8 inches, by erecting a wall marked 'AB' in the site plan, thereby forcibly taking possession of the said portion. Hence, the suit for possession.

3. Upon service of notice, the defendants entered appearance and contested the suit by filing their written statement, wherein the material averments of the plaint were specifically denied and dismissal of the suit was prayed for.

4. The plaintiff thereafter filed a replication, wherein the averments and preliminary objections taken in the written statement were



specifically traversed and denied, and the pleadings set forth in the plaint were expressly reaffirmed and reiterated in their entirety.

4.1. Upon a comprehensive and circumspect examination of the pleadings of the parties, and having regard to the rival assertions emerging therefrom, the Court considered it necessary to delineate and crystallize the real points of controversy requiring adjudication. Accordingly, for the purpose of a structured, focused, and legally sound determination of the lis, the following issues were framed for consideration:-

1. *Whether the plot in dispute measures 4 marlas or 4 biswas? OPD.*
2. *Whether the suit is bad for non joinder of necessary parties and causes of action? OPP.*
3. *Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD.*
4. *Whether the suit is within time? OPP.*
5. *Whether the suit is maintainable in the present form? OPD.*
6. *Whether the plaintiff is estopped by his act and conduct from filing the suit? OPD.*
7. *Whether the plaintiff is entitled to the possession of the plot in dispute? OPD.*
8. *Relief.*

5. Both parties were afforded full and adequate opportunity to lead evidence in support of their respective stands. After a comprehensive appreciation of the oral as well as documentary evidence adduced on record, the learned Sub-Judge, 2nd Class, Ludhiana, vide judgment and decree, decreed the suit of the plaintiff with costs. The plaintiff was held entitled to possession of the suit property by way of demolition of the wall



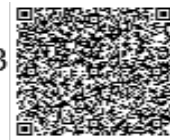
constructed at points marked 'A' to 'B', as delineated in the site plan Ex. P2.

6. Aggrieved by the aforesaid judgment and decree, the defendants preferred an appeal. The learned Additional District Judge, Ludhiana, upon reappraisal of the matter, allowed the appeal and set aside the judgment and decree passed by the learned Sub-Judge.

6.1. Dissatisfied with the reversal of the decree, the appellant–plaintiff has instituted the present Regular Second Appeal. Upon admission of the appeal, notice was issued to the respondents, who have since entered appearance through learned counsel and have contested the same. The records of the Courts below were requisitioned and are available for perusal and adjudication.

7. I have heard the learned counsel appearing for the parties at considerable length and have given my anxious, thoughtful, and meticulous consideration to their rival submissions, in the light of the pleadings, the evidence on record, and the findings recorded by the Courts below.

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. The appeal having been admitted for final hearing, the matter was thereafter taken up for consideration. In the course of hearing, this Court, vide order dated 14.09.2023, was pleased to pass the following order:-

“The arguments have been heard at sufficient length.

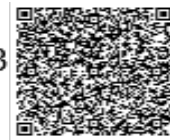
It is not in dispute that the defendant No.1-Sh. Teja Singh purchased two marlas land from Sh. Chotta Singh. It has also come on record that the plaintiff-Dalip Singh surrendered his share in the land which was allotted as manure pit and in lieu thereof Sh. Dalip Singh was allotted more area in the plot in question.

In these circumstances, the pivotal issue which requires adjudication is the total area in possession of defendant no.1, who is purchaser of two marlas of plot vide sale deed dated 22.08.1983.

From the layout plan produced by the plaintiff-Sh. Dalip Singh, it is evident that the dividing line between both the portions respectively belonging to the plaintiff and defendant no.1 is not straight towards North. Towards south side, the width of the plot in possession of the plaintiff is shown to be more when compared with the plot in possession of defendant no.2.

However, before deciding the case, it becomes important to know the total area in possession of defendant no.1-Sh. Teja Singh.

Hence, the Deputy Commissioner, Ludhiana, is requested to depute a senior Kanungo along with the Patwari of the area to visit the site and carry out the demarcation with respect to the property in possession of Sh. Teja Singh as well as Sh. Dalip Singh. The revenue officials will demarcate the property after giving notice to the parties.



The appellant shall have the liberty to produce a copy of the order before the Deputy Commissioner, Ludhiana, for necessary action.

The report be submitted before the next date of hearing.

List, in the urgent list, on 16.10.2023.”

10. The report submitted by the Deputy Commissioner, Ludhiana, has been taken on record. A perusal of the demarcation report reveals that the total area found in possession of both parties aggregates to approximately 5-1/16 marlas, which exceeds the recorded area of the concerned khasra number by 1-1/16 marlas. As per the site plan prepared by the Kanungo, the appellant–plaintiff was found to be in possession of 3 kanal 7 marlas, whereas Teja Singh, respondent No.1, was found to be in possession of 2.73 marlas of land.

10.1. It is a settled principle of civil jurisprudence that a suit must be adjudicated strictly on the basis of the pleadings of the parties, and neither party is permitted to travel beyond the case set up in its pleadings. In the instant case, the plaintiff has categorically averred in the plaint that he is in possession of 2 marlas of land. The relevant extract of paragraph No. 2 of the plaint is reproduced hereinbelow:-

“That Sh. Nand Singh, father of defendant No.2 and the plaintiff was owner of the land measuring 4 marlas, comprising in Khasra No.432, Khata No.452/538, as per Jamabandi for the year 1980-81 situated in village Saholi, Tehsil and District Ludhiana. Sh. Nand Singh died, after the death of Nand Singh, the said land measuring 4 marlas have been inherited by the plaintiff and defendant No.2 in equal share to the extent of 2 marlas each. A mutation at serial No.230 was entered and sanctioned in their favour as per the Will of the deceased.”



11. However, during the course of trial, evidence was adduced to the effect that at the time of partition, a comparatively lesser area had fallen to the share of defendant No.2 and a correspondingly larger portion had been allotted to the plaintiff, allegedly on account of the plaintiff relinquishing his claim over a manure pit.

11.1. Such evidence, however, travels beyond and is not in consonance with the categorical pleadings set out in the plaint. The plaintiff's specific and unequivocal case, as pleaded, is that an area measuring 2 marlas had fallen to his share in the partition and that he was in possession thereof. It is a settled principle of law that no amount of evidence can be looked into upon a plea which was never put forward in the pleadings.

11.2. Moreover, as per the demarcation report submitted by the *Kanungo* pursuant to the directions of this Court, the appellant-plaintiff has been found to be in possession of 3.07 marlas of land, which is substantially in excess of the 2 marlas claimed by him as his lawful share. In such circumstances, the very foundation of the plaintiff's claim stands contradicted by the material on record.

11.3. In view of the foregoing analysis, this Court finds no merit in the present appeal. The appeal, being devoid of substance, is accordingly dismissed.

12. Consequent upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In light of the conclusions reached herein, no separate or



independent orders are required in respect of such applications, as their determination has become wholly infructuous and academic.

16.02.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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