



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. RSA-1055-1992(O&M)

Jai Narain (since deceased) through his LRs ... Appellant
Versus

The Haryana Ware Housing Corporation ... Respondent

2. RSA-557-1992(O&M)

The Haryana Ware Housing Corporation ... Appellant
Versus

Jai Narain (since deceased) through his LRs ... Respondent

Date of decision : 09.02.2026

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ajay Jain, Advocate
for the appellant in RSA-1055-1992 and
for the respondent in RSA-557-1992.

Mr.Lekh Raj Sharma, Advocate,
Mr. Kabir Gautam, Advocate and
Mr.Abhishek Sharma, Advocate
for the appellant in RSA-557-1992 and
for the respondent in RSA-1055-1992.

VIKAS BAHL, J.(ORAL)

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**Challenge in the present appeals:-**

1. Present order would dispose of two appeals arising from the same judgments. Regular Second Appeal No.557 of 1992 has been filed by the defendant-The Haryana Ware Housing Corporation in which challenge is to the judgment and decree dated 28.02.1987 vide which the suit filed by the respondent-plaintiff/Jai Narain had been decreed. Challenge in the said appeal is also to the judgment dated 17.12.1991 vide which the appeal filed by the defendant-The Haryana Ware Housing Corporation had been dismissed with slight modification/observations which were made in para 9 of the said judgment by the 1st Appellate Court. Regular Second Appeal No.1055 of 1992 has been filed by the plaintiff-Jai Narain in which challenge is to the judgment of the 1st Appellate Court dated 17.12.1991 to the extent that observations had been made in the last part of para 8 and para 9 of the judgment and the judgment of the trial Court had been slightly modified. Thus, in the said appeal, it has been prayed that the judgment of the trial Court dated 28.02.1987 be upheld.

2. In the present judgment, the parties are being referred to as plaintiff and defendant as they originally were before the trial Court.

ARGUMENTS ON BEHALF OF PLAINTIFF-APPELLANT IN RSA-1055-1992 (NOW BEING REPRESENTED THROUGH HIS LRS)

3. Learned counsel appearing for the plaintiff-Jai Narain has submitted that the trial Court as well as the 1st Appellate Court on all the substantial issues had decided in favour of the plaintiff. It is further submitted that the plaintiff had filed the present suit for possession by way



of demolition of construction shown in red colour in the attached site plan, which had been duly exhibited as Ex.PW4/2, with respect to the encroachment made by the defendant in Mustatil No.184//18, 19/2 and 23/1 and for joint possession of the land shown in red colour in the site plan which was comprised in Mustatil No.184//39 total measuring 1 Kanal 17 Marlas, situated in the revenue estate of Rewari. Learned counsel for the plaintiff has submitted that it is not in dispute that the plaintiff had purchased land measuring 14 kanals 0 marla in auction proceedings dated 25.05.1967 for a total sale consideration of Rs.12,100/-, which was conducted by Tehsildar Sales, Gurgaon and the entire sale consideration was paid and the sale certificate with respect to the same was issued on 12.06.1972 (Ex.PW1/1) and the possession regarding the said property was delivered to the plaintiff on 07.06.1972. It is further submitted that the defendant had illegally constructed a wall on the land of the plaintiff comprised in Mustatil No.184//18, 19/2, 23/1 and over land comprised in Mustatil No.184//39 although on the said Mustatil No.184//39, the plaintiff was owner to the extent of 1/3rd share and with respect to other Mustatil numbers the plaintiff was the exclusive owner and the defendant had no right in the same.

4. It is submitted that the trial Court as well as the Appellate Court had decided the issue with respect to the plaintiff being the owner of the property in dispute in favour of the plaintiff and had also observed that the defendant had encroached upon the property of the plaintiff and that the trial Court had rightly decreed the suit of the plaintiff. It is submitted that



however the 1st Appellate Court although in the judgment had made all the observations in favour of the plaintiff but in the concluding part of paras 8 and 9 of the said judgment had made observations which were beyond the record and were perverse. It is stated that there is nothing on record to even remotely show that the parties were asked to carry out remeasurement or that on remeasurement, the deficiency in the area of the plaintiff was reduced to be 900 sq yards. It is further stated that in the earlier part of the said judgment it had been found that the deficiency in the land of the plaintiff was to the extent of 1 kanal 13 marlas, which was rightly stated to be about 1000 sq. yards and thus, the reduction of the area without there being any further proof of remeasurement is absolutely illegal and beyond the record. It is submitted that the finding to the extent of demolition and grant of possession to the plaintiff with respect to mustatil numbers which are in exclusive ownership of the plaintiff had been rightly passed but with respect to giving of possession to the extent of 1/3rd share in the mustatil number 184//39 is not in accordance with law, inasmuch as, since with respect to the said mustatil number, the plaintiff as well as defendant are co-sharers to the extent of 1/3rd share and 2/3rd share respectively, thus, with respect to the same, the decree for joint possession should have been granted as was granted by the trial Court.

5. Learned counsel for the plaintiff in order to substantiate that the findings of the trial Court and the Appellate Court on the main issues were in accordance with law has referred to the site plan (Ex.PW4/2) to highlight the area which had been encroached by the defendant. It is further submitted



that the area shown in red colour in mustatil number 184//18, 19/2 and 23/1 regarding which the defendant has no right, had been illegally encroached upon by them. It is further submitted that it is the plaintiff who is the owner of the said property and the said aspect is not in dispute and thus, the area as shown in red colour has to be returned to the plaintiff after demolishing the construction raised by the defendant on the same. It is fairly submitted that as far as the ownership of the defendant is concerned, they are owners of 2/3 share of the land comprised in mustatil number 184//39. It is further submitted that in the present case, two demarcation reports had been duly produced and proved on record by the plaintiff which clearly showed that the defendant had encroached upon the property, which had been detailed in the plaint and had been shown in red colour in the site plan (Ex.PW4/2). The first report which has been highlighted by learned counsel for the plaintiff is Ex.PW3/1 dated 20.11.1976, which demarcation report had been prepared prior to the filing of the suit. It is the case of the plaintiff that on the said demarcation having been carried out, the plaintiff learnt that as per the said report, the defendant had encroached upon the land of the plaintiff measuring 23 marlas, which is exclusively owned by the plaintiff and is comprised in Mustatil No.184//18, 19/1 and 23/1. It is further highlighted that as per the said report, the entire land comprised in Mustatil No.184//39 measuring 1 kanal 17 marlas had also been utilized by the defendant for raising their construction although 1/3rd of the said land was in the ownership of the plaintiff and that the said report had been duly proved on record by PW-3 Prem Shankar, Office Kanungo.



6. It is further submitted that importantly vide order dated 05.03.1983 the trial Court had appointed Office Kanungo, Rewari as the Local Commissioner to demarcate the mustatil/killla numbers in dispute as per the High Court Rules and Orders after giving due notices to both the parties and the said Kanungo was also permitted to take help from the documents attached with the original file. It is submitted that in pursuance of the same, the Local Commissioner had duly issued notice to both the parties, which notices had been duly exhibited as Ex.PW6/2 and a perusal of the same would show that on behalf of the defendant Sh. R.K. Gautam, Technical Assistant, had received the said notice on 16.03.1983. It is further submitted that thereafter, the demarcation was conducted on 20.03.1983 in the presence of the authorized representative of the defendant i.e. Dilawar Singh Yadav, who was the Junior Technical Assistant and the said demarcation was carried out in accordance with the High Court Rules and Orders and after confirming “pakka points” (permanent points) in accordance with law. It is further submitted that the detail report of the Local Commissioner dated 20.03.1983 had been duly exhibited as Ex.PW6/4 along with the site plan (Ex.PW6/5) and the same had been duly proved on record by PW6 Roshan Lal Kanungo. It is argued that even as per the said report, the defendant had illegally encroached upon land measuring 1 kanal 1 marla in the mustatil/killla numbers which are specifically owned by the plaintiff and had further raised construction on the entire mustatil/killla number 184//39 (1-17) in spite of the fact that the plaintiff is owner to the extent of 1/3rd share.



7. It is submitted that the objections with respect to the said report were filed by the defendant and the said objections were dismissed vide detailed order dated 21.03.1986. It is argued that a perusal of the said order would show that specific issues were framed and due opportunity to lead evidence was given to both the parties and it was after considering the entire evidence and documents on record that the trial Court had observed that the defendant was duly represented at the time of carrying out of the demarcation and the demarcation was done in accordance with law and that the report of the Local Commissioner dated 20.03.1983 was as per the High Court Rules and Orders and accordingly the objections were dismissed. It is argued that admittedly the said order was not challenged by the defendant and has attained finality.

8. Learned counsel for the plaintiff has further referred to the evidence of AW1 and AW2 to satisfy this Court that the report submitted by the Local Commissioner was in accordance with law. It is submitted that AW2 Vijay Pal, who was admittedly the Manager of the State Ware Housing Corporation, Rewari, had stated in his evidence that at the relevant time, Dilawar Singh Yadav was working as Junior Technical Assistant and in his cross-examination had further admitted that on 16.03.1983 the said Vijay Pal had to go out of station and the person next incharge to him was Technical Assistant R.K. Gautam, who as per Ex.PW6/2 had received the notice. It is further submitted that it has also come in the evidence of the said two witnesses that the next incharge to R.K. Gautam was the Junior Technical Assistant, Dilawar Singh Yadav. It is argued that it is not in



dispute that the notice was duly served upon R.K. Gautam, Technical Assistant and D.S. Yadav, Junior Technical Assistant, was present at the spot and that both the said persons are the employees of the defendant-corporation and that once the report was against the defendant, it does not lie in the mouth of the defendant to raise a plea that they were not authorized. It is submitted that the trial Court had vide order dated 21.03.1986 rightly come to the conclusion that the defendant was duly represented.

9. Learned counsel for the plaintiff has submitted that in the said facts and circumstances, the judgment of the trial Court is absolutely in accordance with law and deserves to be upheld and the judgment of the 1st Appellate Court deserves to be set aside only to the limited extent that observations beyond record have been made in paras 8 and 9 of the said judgment and the relief regarding joint possession of Mustatil No.184//39 has been moulded, which aspect had been highlighted during the course of arguments.

ARGUMENTS ON BEHALF OF THE DEFENDANT (APPELLANT IN RSA-557-1992)

10. Learned counsel for the defendant has submitted that in the present case, the defendant had got possession of the land in the year 1971 and even the construction was raised at that time, whereas, the plaintiff had got the possession on 07.06.1972 and has referred to Ex.PW1/2 in the said regard. It is submitted that once the plaintiff had got the possession of the land subsequent to the possession and construction raised by the defendant,



thus, the question of the defendant having encroached upon the land of the plaintiff does not arise. It is also argued by learned counsel for the defendant that the first report (Ex.PW3/1) of the year 1976 was not in the presence of the defendant and the same was six years prior to the filing of the suit, thus, the question of taking the same into consideration does not arise. With respect to the report dated 20.03.1983, it is submitted that no due notice was served on the defendant and thus, the said report also cannot be taken into consideration for the purpose of examining as to whether the defendant had encroached upon the suit property or not and that once the said two reports are excluded, then, there is no evidence against the defendant to prove any encroachment on behalf of the defendant. It is further submitted that as far as the demarcation report dated 15.10.1986 (Ex.DW5/1) is concerned, it has come on record that there is so much construction on the land in question that the same cannot be demarcated and that even the subsequent report dated 06.05.1988 would in fact show that some third persons are in possession of the land of the defendant and thus, it is the defendant whose land has been illegally occupied.

REBUTTAL ON BEHALF OF PLAINTIFF (NOW BEING REPRESENTED THROUGH HIS LRS

11. Learned counsel for the plaintiff in rebuttal has argued that the said two reports dated 15.10.1986 and 06.05.1988 have been rightly rejected by the 1st Appellate Court as they are baseless. It is argued that it is not in dispute that neither there was any Court order prior to the carrying out of the alleged inspections on the basis of which the reports had been



prepared nor the said alleged demarcations were done in the presence of the plaintiff nor was any notice issued to the plaintiff. It is submitted that the said two reports do not in any way dilute the reports which had been duly exhibited on record and do not further the case of the defendant, inasmuch as, the report dated 06.05.1988 is not with respect to the suit property and even the observations made in the same to the effect that the property of the defendant, which is not the suit property, has been encroached upon by some third person, would not entitle the defendant to encroach upon the land of the plaintiff. It is further submitted that it is open to the defendant to institute appropriate proceedings against any such third person who might had encroached upon their property.

12. It is further submitted that in the present case, once the plaintiff is proved to be the owner of the suit land and it has been found that the defendant had made construction on a part of the said land, then, it is the right of the plaintiff to seek possession from the defendant of the said land. It is further submitted that there is nothing on record to show that the defendant had carried out the demarcation prior to the raising of the construction or consent was ever taken from the plaintiff to carry out the said construction. It is stated that in case the plea of the defendant to the effect that the plaintiff had got possession subsequent to the construction made by the defendant is taken on its face value, then, the question of estoppel/acquiescence does not arise, as even as per their own case they had raised construction prior to the plaintiff having got possession and there is nothing on record to show that the plaintiff had consented to the raising of



the construction on the land of plaintiff. It is further submitted that the plaintiff learnt about the said legality after the demarcation was carried out in the year 1976 and thereafter, had repeatedly requested the defendant to hand over the possession to the plaintiff. It is submitted that since the plaintiff has filed the suit for possession on the basis of title, there is no limitation to seek possession, more so, when the defendant had not raised any plea of adverse possession. In support of his arguments, learned counsel for the plaintiff has relied upon the judgment dated 03.03.2006 in case titled as “***Bhim Singh and others Vs. Zile Singh and others, reported as 2006(3) R.C.R. (Civil) 97*** and also the judgment of the Co-ordinate Bench of this Court dated 30.05.2012 in case titled as “***Joginder Kaur Vs. Gurbachan Kaur and others***”, ***reported as 2013(6) R.C.R. (Civil) 685.***

ANALYSIS AND FINDINGS

13. It is not in dispute that the plaintiff had filed a suit for possession by way of demolition of land/construction shown in red colour in the site plan with respect to Mustatil No.184//18, 19/2 and 23/1 and for joint possession of land shown in red colour in the site plan with respect to Mustatil No.184//39 measuring 1 kanal 17 marlas. It is the case of the plaintiff that the Government of India (Custodian Department) was recorded as the owner of land comprised in Khewat No.638, Khatoni No.879, Mustatil No. 184, Killa No. 18 (9-1), 19/2 (4-4), 23/1 (0-3) measuring 13 Kanals 8 Marlas and Khewat No. 657, Khatoni No. 908, Mustatil No.184, Killa No.39 (1-17), total measuring 15 Kanals 5 Marlas as per Jamabandi for the year 1968-69 (Ex. PE) situated at Village Rewari, Tehsil Rewari,



District Gurgaon. It was further the case of the plaintiff that he had purchased land measuring 14 kanals in open auction for a sale consideration of ₹12,100/- and that 13 kanals 8 marlas of land was comprised in Khewat No.638, Khatoni No.879, Mustatil No.184, Killa No.18 (9-1), 19/2 (4-4), 23/1 (0-3) and 1/3rd share i.e. approximately 12 Marlas was comprised in Khewat No.657, Khatoni No.908, Mustatil No.184, Kila No.39 (1-17). The sale certificate was issued on 12.06.1972 and had been exhibited on record as Exhibit PW1/1.

14. It was further the case of the plaintiff that on 07.06.1972, he was handed over possession of land measuring 13 kanals 8 marlas by the Girdawar and Patwari and was also given ownership/joint possession to the extent of 1/3rd share in Mustatil No.184//39 and that the plaintiff had moved an application before the Tehsildar, Rewari for demarcation and the demarcation report was prepared on 20.11.1976, which had been duly exhibited as Exhibit PW3/1 before the trial Court and that the said demarcation was carried out after following due process and it was found that the defendant had encroached upon 23 marlas of land comprised in Mustatil No.184//18, 184//19/2, 184//23/1, although in the said mustatil/kill numbers, the defendant had no right and the same belonged to the plaintiff and had further raised construction over the entire land measuring 1 kanal 17 marlas in Mustatil No.184//39, although the plaintiff had 1/3rd share in the same. It was also his case that the defendant on 07.09.1971 had purchased the adjoining land and had raised construction in the same without carrying out any demarcation and it was in the year 1976 after the



demarcation had been done, that the plaintiff learnt that the defendant had encroached upon his land and thereafter, he had made repeated requests to remove the construction of the wall but the defendant flatly refused to do the same and thus, the suit was filed.

15. It is the case of the defendant that the plaintiff is estopped from filing the suit on the basis of his own conduct/omission and had permitted the defendant to raise construction. It is their case that the construction was raised in the year 1971, whereas the suit was filed in the year 1982 and that they have not encroached upon the land of the plaintiff.

16. The trial Court on 13.01.1983 had framed the following issues:

- “1. *Whether the plaintiff is owner of the property in dispute? OPP*
2. *Whether defendant is in possession of the property in dispute as trespassers? OPP*
3. *Whether the plaintiff is estopped by his act and conduct from filing the present suit. OP.*
4. *Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD*
5. *Whether the suit is bad for non-joinder of necessary parties, if so to what effect? OPD*
6. *Relief.”*

17. Issue No.1 which was whether the plaintiff was owner of the property in dispute or not was decided in favour of the plaintiff by the trial Court. While deciding the said issue in favour of the plaintiff, the trial Court had taken into consideration the sale certificate dated 12.06.1972 (Exhibit PW1/1) in which it was mentioned that the suit property was purchased by the plaintiff in open auction which was held on 25.05.1967. Reliance was



placed upon the report dated 20.03.1983 of the Local Commissioner (Exhibit PW6/4), site plan (Exhibit PW6/5) as well as jamabandis and other documents. The oral evidence of the witnesses, including that of Roshan Lal, Office Kanungo, who had appeared as PW-6 and had proved on record Local Commissioner's report dated 20.03.1983, was duly considered. It was observed that as far as the aspect of ownership of the suit property was concerned, the same was not specifically denied on behalf of the defendant and thus, after taking into consideration all the documents and evidence and the pleas of the parties, issue No.1 was decided in favour of the plaintiff and against the defendant.

18. Issue No.2 which was with respect to the defendant being in possession of the property in dispute as trespasser was also decided in favour of the plaintiff and against the defendant and under the said issue, the Local Commissioner's report which had been duly exhibited as Exhibit PW6/4 and was produced and proved on record by Roshal Lal, Office Kanungo as PW-6 was taken into consideration and it was observed that the defendant had filed objections regarding the said report of the Local Commissioner but the said objections were rejected vide detailed order dated 21.03.1986, in which order it was observed that the report of the Local Commissioner was in accordance with the High Court Rules and Orders. It was further observed by the trial Court that the said order dated 21.03.1986 was never further challenged by the defendant. The demarcation report dated 15.10.1986 (Exhibit DW5/1) which was relied upon by the defendant was discarded by observing that the said report was absolutely



baseless and the said demarcation was not done in the presence of the defendant nor the said demarcation was conducted in pursuance of any Court order.

19. Under issue No.3 which was on the aspect whether the plaintiff was estopped from filing the suit as per his act and conduct, it was observed by the trial Court that the plaintiff never admitted the defendant to be the owner in possession of the suit property rather he had always been claiming himself to be the owner in possession of the said land and had only learnt about the illegal encroachment after the demarcation had been carried out on 20.11.1976 and had thereafter asked the defendant time and again to remove the construction and on their refusal, had filed the suit. While deciding the said issue in favour of the plaintiff, the trial Court had taken into consideration the judgment passed by the Allahabad High Court in the case of ***Ram Kishan Versus Karan Singh and another*** reported as ***1949 AIR Allahabad 673***. Issue Nos.4 and 5 were also decided against the defendant and under issue No.6, the suit of the plaintiff was decreed in the following terms:

“ISSUE NO.6 RELIEF.

*In view of my above discussion, and findings, I hereby pass a decree from mandatory injunction by way of demolition in favour of the plaintiff against the defendant department of property shown in red colour in the attached site plan over the killa numbers 184/18, 19/2, 23/1 detailed and described in para No.2 of the plaint **and the parties are joint owners in possession of killa No. 184/39 detailed and described in para No.2 of the plaint with costs. Decree sheet be prepared***

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accordingly and file be consigned to records room in due course of time.

*Announced in open court.
28-2-1987.*

*Sd/-
Sub Judge IInd Class,
Rewari 28-2-1987.”*

20. From the above, it is apparent that with respect to the land which was owned by the plaintiff and regarding which the defendant had no right, a decree directing the defendants to demolish the construction was passed whereas qua the suit land which was comprised in Mustatil No.184//39, which was admittedly in the joint ownership of the plaintiff and the defendant in the proportion of 1/3rd and 2/3rd share respectively, the plaintiff was declared to be joint owner in possession of the said land.

21. The defendant aggrieved with the said judgment filed an appeal, which was decided by the First Appellate Court vide judgment dated 17.12.1991. A perusal of the said judgment would show that all the substantial issues were decided in favour of the plaintiff. In paragraph 7 of the said judgment, it was observed that there was no dispute on record with respect to the fact that the plaintiff was owner of the land comprised in Mustatil No.184// 18, 19/2 and 23/1 which in total measured 13 kanals 8 marlas as well as to the extent of 1/3rd share in Mustatil No.184//39 (1-17) and that the said land was purchased from the Government of India vide sale certificate dated 12.06.1972 (Exhibit PW1/1). It was observed that issue No.2 was a material issue as the said issue was whether the defendant had encroached upon the land under the ownership of the plaintiff. The demarcation report dated 20.03.1983 (Exhibit PW6/4), which was carried



out in pursuance of the Court order and in the presence of the authorized representatives of the parties, along with accompanying site plan and other documents were taken into consideration. It was observed that as per the said report, the defendant had encroached upon land measuring 1 kanal 1 marla out of the mustatil/khasra numbers which were exclusively owned by the plaintiff and regarding which the defendant had no right and it was found that the defendant had raised construction on the entire land comprised in Mustatil No.184//39, which included the share of the plaintiff to the extent of approximately 12 marlas and thus, the entire encroached land was found to be 1 kanal 13 marlas. The fact that the objection against the said report was dismissed vide order dated 21.03.1986 was also taken into consideration.

22. The Local Commissioner's reports which were relied upon by the defendant were rejected. It was observed that both the reports dated 15.10.1986 and dated 06.05.1988 were not in pursuance of any order passed by the Court and the alleged demarcations were also not done in the presence of the plaintiff. It was further observed that as far as the report dated 06.05.1988 was concerned, the same was given after the suit had been decided by the trial Court in February 1987 and that as per the report dated 06.05.1988, which was not with respect to the suit land, it was found that other persons had encroached upon the land of the defendant and the said report was thus completely irrelevant for the purpose of ascertaining whether the defendant had encroached upon the land of the plaintiff or not.

The concluding portion of the said judgment of the First Appellate Court is

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reproduced hereinbelow:

*“...So its stand proved that the defendant made encroachment over the plaintiff’s land in the aforesaid khasra No. as reported by the local commissioner which is to the extent of 1 kanal 13 marlas or about 1000 sq. yard. **However, during the pendency of the appeal, both the parties were asked to remeasurement their areas as both the parties have built up boundary wall around their areas. On that measurement only the deficiency of 900 sq. yard was found in the area of the plaintiff. This included 1/3 share in khasra No. 184/39(1-17). So if that area is excluded then the encroachment comes to 429 sq. yards. The issue is decided accordingly. No other point was urged.***

9. *In view of my above discussion, the defendant has made encroachment of 900 sq. yard out of the land of the plaintiff. The plaintiff has 1/3 share in khasra No. 184/39(1-17). If the area of his share i.e. 373 sq. yards is deducted from the total encroached area, the encroachment comes to 527 sq. yard. So, the defendant has to deliver the possession of the 1/3 share land out of khasra No. 18/39(1-17) and has also to restore the possession of khasra No. 23/1 (0-3) which is at present in the possession of the defendant but it appears in the sale deed of the plaintiff. The remaining area shall be restored to the plaintiff in any manner convenient to both the parties. With that observation, the appeal fails and the same is hereby dismissed. Decree sheet be prepared accordingly and file be consigned to the record-room.*

*Announced
17-12-91.*

*sd/-
Addl. District Judge, Rewari.
17-12-91”*

A perusal of the said part of the judgment would show that

although the First Appellate Court had affirmatively found that the defendant had made encroachment over the plaintiff’s land as reported by



the Local Commissioner to the extent of 1 kanal 13 marlas which came to be about 1000 square yards (998.25 square yards to be precise), however, subsequent to the same on the basis of surmises and conjectures and without there being anything on record to show any re-measurement had been done, the First Appellate Court stated that deficiency of the land of the plaintiff was 900 square yards and had thereafter given certain directions to the defendant to deliver the possession of $1/3^{\text{rd}}$ share out of Mustatil No.184//39 (1-17). Although with respect to the said mustatil number, the prayer of the plaintiff was for relief of joint possession and since the plaintiff and the defendant were joint owners of the said mustatil number to the extent of $1/3^{\text{rd}}$ and $2/3^{\text{rd}}$ share respectively, the observations of the First Appellate Court and the moulding of the relief on the said aspect were apparently beyond record and against settled law. The said aspect has not been disputed on behalf of the plaintiff as well as the defendant and thus, the said part of the judgment of the First Appellate Court deserves to be set aside and the judgment of the trial Court deserves to be upheld.

23. Against the judgments and decrees of the trial Court as well as the First Appellate Court, the defendant has filed RSA-557-1992 in which challenge is made to the judgments of the trial Court as well as the Appellate Court, which includes the challenge to the last two paras of the judgment of the First Appellate Court and a prayer has been made for dismissal of the suit of the plaintiff. The plaintiff has filed RSA-1055-1992 in which challenge is only to the observations made in the concluding part of paragraph 8 and to the moulding of the relief in paragraph 9 (which have



been highlighted hereinabove).

24. RSA-1055-1992 was admitted on 29.07.1992 and thereafter a miscellaneous application bearing CM-14448-C-2015 was filed by the plaintiff in RSA-1055-1992 and a coordinate Bench of this Court vide order dated 10.12.2015 while issuing notice was pleased to observe that the construction, if any, at the site in question/disputed premises would remain stayed. A subsequent application was filed for vacation of the said interim order but it is not in dispute that the interim order is continuing till today. Even efforts were made by both the counsel for amicable settlement, however, the same did not fructify.

25. The fact that the plaintiff had purchased land measuring 14 kanals 0 marla in auction proceedings held on 25.05.1967 with respect to land comprised in Khewat No.638, Khatoni No.879, Mustatil No.184, Killa No.18 (9-1), 19/2 (4-4), 23/1 (0-3) and 1/3rd share i.e. approximately 12 Marla comprised in Khewat No.657, Khatoni No.908, Mustatil No.184, Kila No.39 (1-17), regarding which the sale certificate dated 12.06.1972 (Exhibit PW1/1) was issued has been fully proved on record and is not disputed before this Court. With respect to land comprised in Mustatil No.184//18, 19/2, 23/1, the defendant has no right whereas with respect to Mustatil No.184//39, the defendant is owner to the extent of 2/3rd and the plaintiff is owner to the extent of 1/3rd share and the said aspects are also not disputed. The factum that the defendant had purchased adjoining land on 07.09.1971 is also not in dispute. Thus, the only bone of contention between the parties

whether the defendant has encroached upon the land which is owned by the



plaintiff regarding which the defendant has no right and has further encroached and raised construction over Mustatil No.184//39 which is also owned by the plaintiff to the extent of 1/ 3rd. Both the Courts have concurrently found the said aspect against the defendant and in favour of the plaintiff.

26. The encroachment by the defendant is duly proved on record and the said aspect is detailed and highlighted in the subsequent paragraphs.

27. On 05.03.1983 (page 123 of the trial Court record), the trial Court had appointed a Local Commissioner for getting the land in dispute demarcated as it was found that the same was necessary for the proper adjudication of the controversy in hand and accordingly Office Kanungo, Rewari, was directed to demarcate the land in dispute as per High Court Rules and Orders, after giving notice to both the parties and liberty was granted to the said Kanungo to take help from the documents attached with the original file. It is not in dispute that in pursuance of the said order, the Kanungo issued notice, which is duly exhibited as Exhibit PW6/2, informing the parties that the measurement of the site is fixed for 20.03.1983. In the said notice, it was stated that he would reach the spot at 9:00 AM on 20.03.1983 and the Patwari Halqa was also instructed to be present. The said notice was signed by the plaintiff on 15.03.1983 and by Shri R.K. Gautam, who is the Technical Assistant of the defendant-Corporation, on 16.03.1983. The same was also signed by the Patwari Halqa on 15.03.1983. On 20.03.1983, the Kanungo along with the Patwari had carried out the demarcation.



28. The demarcation report had been duly produced and proved on record as Exhibit PW6/4. A perusal of the said report would show that three pucca points/permanent points were established and the demarcation was done thereafter in accordance with the High Court Rules and Orders. On the spot it was found that the defendant had raised construction and had encroached upon 0 kanals 9 marlas in Mustatil No.184//18, 0 kanal 9 marlas in Mustatil 184//19/2 and 0 kanal 3 marlas in Mustatil No.184//23/1 and thus in the said three khasra numbers, regarding which the defendant had no right, he had encroached upon a total area of 1 kanal 1 marla. It was further found that the defendant had taken possession/made encroachment in the entire Mustatil No. 184//39 which measured 1 kanal 17 marlas although the plaintiff had 1/3rd share in the said property. Along with the said demarcation report which had been carried out in accordance with law, the site plan (Exhibit PW6/5) was also prepared which duly depicted the encroachment. Exhibit PW6/3 is the spot note signed by Shri D.S. Yadav, Junior Technical Assistant and also by the plaintiff duly certifying the three pakka points and in the same, it was specifically mentioned that no objection was raised by anybody with respect to the said three pucca points.

29. The defendant had filed objections against the said report of the Local Commissioner which were dismissed by the trial Court vide detailed order dated 21.03.1986. A perusal of the said order, which is at page 141 of the trial Court record, would show that the issues were framed by the trial Court for considering the objections and due opportunity was given to both the parties to lead their evidence. The objector/defendant had examined



AW1-D.S. Yadav and AW2-Vijay Pal Singh in support of the said objections. On the other hand, the plaintiff had examined Prem Nath Mehta Patwari as RPW1 who had stated that he had visited the spot with Roshan Lal, Field Kanungo, who had prepared the report in accordance with law and who had also duly proved on record the copy of notice PW6/2, the spot memo Ex.PW6/3, site plan Ex.PW3/1 and other documents. After considering the evidence of the parties, the trial Court had come to the conclusion that the Local Commissioner had carried out the demarcation after issuing due notice to the parties and the defendant was duly represented by his authorized attorney at the spot and that three pucca points (permanent points) were also established prior to the measurement of the land in dispute. The objections to the said report were accordingly dismissed and the report was upheld. Relevant portion of the said order is reproduced hereinbelow:-

“Insequence of my above discussions from the perusal of the Local Commission report Ex. PW3/1, copy of Rojnamacha Ex.PW1/2, site plan Ex.PW6/5, notice Ex.PW6/2, spot memo Ex.PW6/3, and from the admission of the AW1, AW2 and statement of RPW1, it goes without saying that the Local Commission issued a notice to the defendant corporation prior to the visiting of the spot and it was served upon the duly authorised attorney of the defendant corporation who was principal officer on the date of the service of the notice Ex.PW6/2 it has been also proved that duly authorised attorney and principal Officer of the defendant corporation Sh. Delawar Singh Yadav was also present at the time of spot inspection by the Local Commission. From the perusal of Ex.PW6/4 it goes without sayint that the Pakka points namely



A.B,D. were located by the Local Commissioner then he made measurement. Hence, I am of the considered view that the Local Commission measured the spot after due notice to the defendant and duly authorised attorney of the defendant corporation was present at the time of spot inspection by the Local Commission and the Local Commission located three pakka points prior to the measurement the land in dispute.

In view of my above discussions and findings I am of the considered view that the report of the Local Commission is as per rules and correct is not liable to be dismissed. Therefore, I decide this issue against the objector/defendant.

RELIEF:-

In view of my above discussions and findings under Issue No.1 the objections of the objector/defendants merits dismissal, resultantly dismissed. No order as to costs.

*ANNOUNCED IN THE OPEN COURT. Sd/-
21-3-1986 SJIIC/Rewari
21-3-1986”*

30. Primary objection raised before the trial Court, as has also been raised before this Court, was to the effect that no due notice was served on the defendant prior to the demarcation and D.S. Yadav in whose presence the spot had been inspected/demarcated was not authorized by the defendant. The said two objections were rejected by the trial Court vide order dated 21.03.1986. It is not in dispute that the said order was not challenged any further and the same has attained finality but it would be relevant to note that both the said objections which were raised before the trial Court as have been raised before this Court with respect to the report Ex.PW6/4 are meritless and deserve to be rejected. Apart from the evidence and documents produced by the plaintiff and the fact that the defendant



never challenged the order, it would be relevant to note that a perusal of evidence of AW2-Vijay Pal as well as AW1-D.S. Yadav, who were defendant witnesses, would show that both the said objections are absolutely frivolous.

31. AW2-Vijay Pal Singh who as per the case of the defendant was the Manager, State Warehouse, Rewari, had admitted in his cross-examination that he was the Manager on 20.03.1983 and Dilawar Singh Yadav was working in the capacity of Junior Technical Assistant. In his cross-examination, the said Vijay Pal Singh had admitted that from 15.03.1983 till 15.05.1983, he had gone out of Rewari on official tour and in such a situation, the person next in line was the authorized person. It was further admitted that R.K. Gautam who was posted as Technical Assistant in the Warehouse was next Incharge and it was the said R.K. Gautam who had signed the notice received from the Local Commissioner which was duly exhibited as Ex.PW6/2. From the said facts, it is apparent that the Local Commissioner had served the notice on 16.03.1983 upon R.K. Gautam who was Technical Assistant and at the relevant time was the authorized person. It had further come in the cross-examination of said AW2 that in case neither Manager nor Technical Assistant was present, then, the person who was next in grade had to perform their duties and the said person was Junior Technical Assistant and on the relevant date, Dilawar Singh Yadav, Junior Technical Assistant, was posted in the Warehouse in question and Ex.PW6/3 bears signatures of Dilawar Singh Yadav, Junior Technical Assistant. It was further admitted by AW2 that 20.03.1983 was Sunday and



on that day, R.K. Gautam was not present in the Warehouse. Thus, from the evidence of AW2, it is fully established that Dilawar Singh Yadav, Junior Technical Assistant who was present at the spot at the time of demarcation was the authorized person and R.K. Gautam who had received notice from Local Commissioner on 16.03.1983 was the authorized person on the said date. The true translation of the relevant portion of evidence of AW2 (translation has been done by the Translation Branch of this Court) is reproduced hereinbelow:-

“.....In my absence, the person in the next grade or the person authorized by the Distt. Manager performs the duties.

On 16-3-83, I had gone out somewhere on a tour. Ex. PW-6/2 bears the signatures of R.K. Gautam, and he has entered the date of 16-3-83. On 16-3-83, R.K. Gautam was posted as Technical Asstt. in the Warehouse. Sh. R.K. Gautam, Technical Asstt., comes in the grade next to mine. On the day I am not present and the Tech. Asstt. is also not present, then the person next to him performs duties in my place. The grade next to Tech. Asstt. is that of Jr. Tech. Asstt. In those days, Sh. Dilawar Singh Yadav, Jr. Tech. Asstt., was posted in the Warehouse. PW-6/3 bears the signatures of Dilawar Singh Yadav, Jr. Tech. Asstt. I had gone out of Rewari on official tour on 15-3-83 and then I returned to Rewari Warehouse on 15-5-83 itself.

Xxx xxx

.....On 20/03/1983 was Sunday and on that day Sh R.K. Gautam was not present in the Ware House.”

32. Even AW1-D.S. Yadav, J.T. Assistant had deposed in his examination-in-chief that he had remained posted in the Branch of Rewari

Hr. Warehouse from 16.08.1978 to 01.07.1983 and on 20.03.1983, the



Commission had visited and that he was on duty in the Warehouse and was present there. It was further stated in his examination-in-chief that on 20.03.1983, the Manager had gone outside and in his cross-examination, he had further admitted that PW6/3 bears his signatures and that on 20.03.1983, both the Technical Assistant and Manager were not present. It had further come in the cross-examination of the said witness that he had taken tea with Girdawar and Patwari which was served at the spot at the time of demarcation. Relevant portion of his evidence is reproduced hereinbelow:-

“Statement of D.S. Yadav, J.T. Assistant Hr. Warehouse at Tauroo on S.A.

Deposed that I remained posted in branch of Rewari Hr. Warehouse from 16.08.1978 to 01.07.1983. On 20.03.1983, the Commission had visited. I was on duty in the Warehouse and was present there. The incharge of the warehouse is the Manager and after him there is Technical Assistant or Godown Keeper.

xxx

PW6/3 bears my signatures. At that time, R.K. Gautam was the Technical Assistant and it is true that Ex PW6/2 bears the signatures of Sh R.K. Gautam. I don't know whether Sh R.K. Gautam had submitted any application to the Commission or not. On 16.03.1983, the Manager had gone outside and was not present in the office. On 20.03.1983, both Technical Assistant and Manager were not present. In absence of Manager, the Incharge of warehouse is Technical Assistant.....”

33. Additionally, it would be relevant to mention that once notice



was issued by the Local Commissioner and the same was received by R.K. Gautam, who was admittedly Technical Assistant in the defendant's warehouse and further in pursuance of the same, D.S. Yadav had come to the spot and had signed the spot note Ex.PW6/3, then, it does not lie in the mouth of the defendant to raise the plea that the said officers although admittedly were employees but were not authorized representatives. Authorisation is an internal matter of the defendant-Corporation, although in the present case it has been proved beyond doubt that the said officers were authorized persons. Other evidence as well as the report dated 20.11.1976 (Ex.PW3/1) also support the case of the plaintiff that the defendant has encroached upon the property of the plaintiff. However, the report Ex.PW6/4 along with other documents fully clinches the issue in favour of the plaintiff and has been rightly relied upon by both the trial Court as well as the First Appellate Court.

34. The report dated 15.10.1986 (Ex.DW5/1) has been rightly rejected by both the Courts. It is not in dispute that demarcation on the basis of which the said report had been prepared was not conducted in the presence of the plaintiff nor the Naib Tehsildar who had made the said report was appointed vide any Court order. Once report Ex.PW6/4 was duly proved on record and objections regarding the same were also dismissed and the said Local Commissioner had carried out the demarcation in the presence of the parties concerned and the said Local Commissioner was appointed in pursuance of an order passed by the trial Court, then, there was no reason for any other report to be called nor had the defendant ever asked



the Court to appoint a fresh Local Commissioner. Moreover, even report dated 15.10.1986 does not in any way further the case of the defendant and it was stated by the Naib Tehsildar that the spot measurement was not possible on account of pakka (permanent construction). Even the second report dated 06.05.1988 relied upon by the defendants is baseless and does not further the case of the defendant. The said report is subsequent to the judgment of the trial Court dated 28.02.1987. The plaintiff was admittedly not present at the time of the said demarcation and there was no Court order directing any Local Commissioner to carry out the demarcation. Moreover, it is also not in dispute that as per the said demarcation report, no demarcation of the suit property had been carried out and in the said report, it had only been stated that certain person had encroached upon the land of the defendant and thus, the same has no relevance. Merely because certain persons have encroached upon the land of the defendant would not entitle the defendant to encroach upon the land of the plaintiff. Moreover, it is open to the defendant to institute appropriate proceedings against any person who might have encroached upon the land owned by the defendant. Thus, finding of both the Courts on the aspect of encroachment is upheld.

35. The finding of the Courts on issue No.3 with respect to estoppel is also in accordance with law and deserves to be upheld. Argument sought to be raised on behalf of the defendant to the effect that the present suit deserves to be dismissed on the ground that construction was carried out in 1971 whereas the suit had been instituted in the year 1982 and also on the ground of estoppel/acquiescence is baseless and



deserves to be rejected. In this regard, it is relevant to note that the plaintiff had filed the present suit for possession with respect to mustatil No.184//18, 19/2 and 23/1 on the basis of title.

36. Article 65 of the Limitation Act, 1963 which prescribes the period of limitation for possession of immovable property or any interest therein based on title is reproduced hereinbelow:-

65.

For possession of immovable property or any interest therein based on title.

Explanation.—For the purposes of this article—
(a)where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;
(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;
(c)where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.

Twelve years

When the possession of the defendant becomes adverse to the plaintiff.



A perusal of the above would show that the period of 12 years has been prescribed as the period of limitation from the date the possession of the defendant becomes adverse to the plaintiff. It has been held in the case of ***Bhim Singh and others*** (Supra) that there is no period of limitation for suit for possession filed by plaintiff on the basis of title and in order to defeat the same, it is the defendant who has to set up and prove the plea of adverse possession. It was further observed that apart from the aforesaid defence of adverse possession, plaintiff has no restriction of limitation to seek possession of immovable property on the basis of title. Relevant portion of the said judgment is reproduced hereinbelow:-

*“15. Therefore, it must follow that the intention behind [Article 65](#) is clear and unambiguous i.e. **not to provide any period of limitation for a suit for possession by a plaintiff on the basis of title, however, at the same time by providing a defence to a defendant of adverse possession. The defendant in such a defence would have to prove the aforesaid factum of adverse possession and, naturally, the onus of proving the aforesaid defence would be upon the defendant. The reason behind the intention of the Legislature is very clear. If a defendant is able to establish his adverse possession, then the very title of the plaintiff to the property is extinguished. But for the aforesaid defence of adverse possession, a plaintiff has no restriction of limitation to seek possession of immovable property on the basis of his title.**”*

37. The said judgment has been followed by the Coordinate Bench of this Court in the case of Joginder Kaur and in the case of Joginder Kaur, the Special Leave to Appeal (Civil) was dismissed by the Hon’ble Supreme Court vide order dated 05.10.2012. In the present case, even in case the entire period from 1971 to 1982 is taken into consideration, then also, the



period of 12 years has not elapsed. The defendant in the present case has not set up any plea of adverse possession, much less, proved the same. Thus, there is nothing which bars the plaintiff from filing the present suit for possession on the basis of title.

38. Even the plea of estoppel / acquiescence is baseless. The Allahabad High Court in the case of ***Ram Kishan (supra)***, which had been relied upon by the Ist Appellate Court, had observed that since the appellant therein had not been able to show that the plaintiff knew that the constructions were being made on the plaintiff's land, thus, it could not under such circumstances be said that even if the plaintiff had asked the appellant therein to make the constructions, the plaintiff was aware that he was asking the appellant therein to make constructions on his own land. Several judgments were referred to in the said judgment, in which it was held that the plea of acquiescence cannot be held as established on the ground that the plaintiff therein raised no objection when a building was constructed on his land and that there was long delay in enforcing his rights, if any, with respect to his land. The abovesaid case was on a higher footing for the appellant/ defendant therein than for the defendant in the present case, inasmuch as, it was the case of the appellant therein that he had purchased the house in question with the consent and knowledge of the plaintiff therein and had even paid certain amount to the plaintiff therein on two occasions and while the house was being constructed, the plaintiff therein had encouraged him to build, telling him to make a decent construction. Even in the said circumstances, it was held that the plaintiff



was neither estopped nor had acquiesced to the construction raised by the appellant therein. The relevant portion of the said judgment is reproduced hereinbelow:-

*“8.Now, it would appear that it was alleged on behalf of the defendant vendee, that is, the appellant, that he had purchased the house with the consent and knowledge of the plaintiff and in fact he had paid zar-e-chaharum to the plaintiff and that on two occasions subsequently, while the house was in the course of construction, the plaintiff had encouraged him to build telling him to make a decent construction.....
.....Even if it had been believed that the plaintiff asked the appellant to make the construction-and in a decent manner -that would not show by itself that the plaintiff was aware that he had his own rights in the site and notwithstanding them he allowed the appellant to make the construction. It has been found by the lower Court that as a matter of fact the appellant was making constructions upon a land which adjoins his own residential house. It was not shown by the appellant that the plaintiff knew that the constructions were being made on the plaintiff's land. It cannot under the circumstances be said that even if the plaintiff asked the appellant to make the constructions the plaintiff was aware that he was asking him to make the constructions on his own, that is plaintiff's, land and so Section 115, Evidence Act does not help the appellant at all. The plea of estoppel raised by the appellant appears to be inconsistent with his pleadings for therein he had clearly said that every owner of the house in the village had a right to transfer his property without the permission of the zamindar. In **Mustafa Husain Syed v. Mt. Saidul Nisan**, 1926-3 O.W.N. Sup. 282: (AIR 1927 Oudh 66) , it was held that:*

“The plea of acquiescence cannot, therefore, be held as established on the ground that the plaintiff raised no objection when a building was constructed on his land and that there was long delay in enforcing his rights, if any, in respect of the land in question.”

*Similar view was expressed in **Dan Bahadur Singh and another v. Talewant Singh and Others**, 1937 O.W.N. 330: (AIR 1937 Oudh 226) . In the present case also it was alleged that the plaintiff zamindar had made no objection to the constructions and so the rulings cited above would be*



applicable and they make the plea of estoppel raised by the appellant unsustainable. The decision of the lower appellate Court was obviously correct.”

39. In the present case, apart from the fact that the suit of the plaintiff is within limitation, it is not the case of the defendant that there was any overt act done by the plaintiff to give consent to the defendant to raise construction in the property of the plaintiff rather it has been argued before this Court on behalf of the defendant that the defendant had raised the construction in the year 1971 and the possession was taken by the plaintiff subsequent to the same in the year 1972 and thus, it is not even the case of the defendant before this Court that the construction was raised in the presence of the plaintiff, muchless, with his consent. Further it is not disputed that there is no demarcation report produced by the defendant to show that any demarcation was carried out by the defendant prior to raising his construction in the year 1971, in order to show due diligence on his part. Thus, the law laid down in the abovesaid judgment applies on all fours and calls for rejection of the plea raised on behalf of the defendant. No judgment contrary to the abovesaid judgment has been cited on behalf of the defendant.

40. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of ***Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters*** reported as



(2016) 6 Supreme Court Cases 157, it was observed that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground, i.e., ground No.(a) is when the decision is contrary to law or to some custom or usage having the force of law. The finding of the Ist Appellate Court, as has been detailed hereinabove and also hereinafter, is contrary to settled law and beyond the record and thus, deserves to be set aside.

41. From the abovesaid facts and circumstances, this Court is of the view that the suit of the plaintiff deserves to be decreed and the judgment of the trial Court dated 28.02.1987 deserves to be upheld. The judgment of the Ist Appellate Court in so far as the appeal filed by the defendant had been dismissed, also deserves to be upheld but the observations made by the Ist Appellate Court in paragraphs 8 and 9 to the following extent deserves to be set aside:-

“...However, during the pendency of the appeal, both the parties were asked to remeasurement their areas as both the parties have built up boundary wall around their areas. On that measurement only the deficiency of 900 sq. yard was found in the area of the plaintiff. This included 1/3 share in khasra No. 184/39(1-17). So if that area is excluded then the encroachment comes to 429 sq. yards. The issue is decided accordingly. No



other point was urged.

9. *In view of my above discussion, the defendant has made encroachment of 900 sq. yard out of the land of the plaintiff. The plaintiff has 1/3 share in khasra No. 184/39(1-17). If the area of his share i.e. 373 sq. yards is deducted from the total encroached area, the encroachment comes to 527 sq. yard. So, the defendant has to deliver the possession of the 1/3 share land out of khasra No. 18/39(1-17) and has also to restore the possession of khasra No. 23/1 (0-3) which is at present in the possession of the defendant but it appears in the sale deed of the plaintiff. The remaining area shall be restored to the plaintiff in any manner convenient to both the parties....”*

Thus, the regular second appeal filed by the plaintiff i.e., RSA-1055-1992 is allowed and the judgment of the Ist Appellate Court to the abovesaid extent is set aside and the judgment of the trial Court dated 28.02.1987 is upheld. The regular second appeal i.e., RSA-557-1992 filed by the defendant is dismissed with the abovesaid observations.

42. Before parting it would be relevant to note that CM-7627-C-2024 was filed by the plaintiff in RSA-1055-1992 which is an application under Order 41 Rule 27 CPC read with Section 151 CPC for placing on record certified copies of the jamabandis for the year 1968-69 till the year 2018-19 of Village Rewari, District Gurgaon.

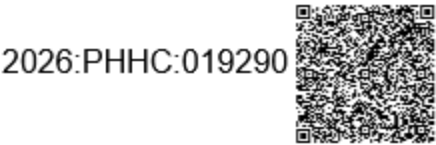
43. Learned counsel for the plaintiff has annexed the said jamabandis in order to show that the khewat and khatoni of the plaintiff was separate from khewat / khatoni of the defendant with respect to mustatil no.184//18, 19/2, 23/1 total land measuring 13 kanals 8 marlas and that the plaintiff was the exclusive owner of the said land. It is further stated that



from the said jamabandis, it is also established that with respect to mustatil no.184//39 (1-17), the plaintiff was owner to the extent of 1/3rd share and the defendant was owner to the extent of 2/3rd share. It would be relevant to note that said aspect has not been disputed before this Court and thus, in the said circumstances, the counsel for the plaintiff has submitted that he would not press the present application and the same be disposed of as not pressed. Ordered accordingly.

44. CM-148-C-2025 is another application filed by the plaintiff under Order 41 Rule 27 CPC read with Section 151 CPC in order to produce additional evidence by way of certified copy of measurement reports dated 23.04.2018 and 26.02.2024 in order to highlight the fact that even during the pendency of the appeal, demarcations were carried out on the asking of the defendant and even the said demarcation reports indicate the encroachment made by the defendant over the suit land owned by the plaintiff. It is submitted on behalf of the plaintiff that in view of the report Ex.PW6/4 which was duly exhibited and proved on record and regarding which the objection of the defendant was also dismissed, the plaintiff does not press the said application also and the same be also disposed of as having not been pressed. Ordered accordingly.

45. CM-14448-C-2015 was filed by the plaintiff for stay of construction which was being done by the defendant, during the pendency of the appeal. As has been detailed hereinabove, on 10.12.2015, the co-ordinate Bench of this Court was pleased to stay the construction on the site in question and the said interim order has continued till date. CM-4085-C-



2016 was filed by the defendant for vacation of the said interim order. Since the main appeal itself has been decided, thus, the said applications also stand disposed of.

46. Pending applications, if any, stand disposed of in view of the abovesaid judgment.

February 09, 2026.

naresh.k/Punit/Pawan/d.k.

(VIKAS BAHL)

JUDGE

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