



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

(205)

RSA No:- 1257-1996 (O&M)**Reserved on: 25.02.2026****Pronounced on: 06.03.2026****Uploaded on: 09.03.2026****Bhagwana and others****....Appellants****Versus****Mange Ram and others****....Respondents****CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Argued by: Mr. Kulvir Narwal, Advocate
for the appellants.

Mr. Tapan Yadav, Advocate with
Mr. Gursimrat Sandhu, Advocate
for the respondents.

VIRINDER AGGARWAL, J

1. The appellants–defendants, aggrieved by the concurrent judgment and decree dated 17.04.1996 passed by the learned Additional District Judge, Rohtak, whereby the appeal preferred by them was dismissed and the judgment and decree dated 29.03.1994 passed by the learned Additional Senior Sub Judge, Bahadurgarh decreeing the suit of the respondents–plaintiffs was affirmed, have approached this Court by way of the present Regular Second Appeal.

BACKGROUND FACTS

2. The respondents–plaintiffs filed a suit for permanent injunction seeking to restrain the appellants–defendants from forcibly taking possession of the suit



property. The case of the plaintiffs is that both parties are permanent residents of Village Shahpur, Tehsil Bahadurgarh, District Rohtak. The plaintiffs claimed to be owners in possession of a plot measuring North 144', South 122', East 63' and West 63', as shown in the site plan, bounded by Rasta Share Aam towards the East, the house of Nihalu and Aam Rasta towards the West, Shamlat land towards the North and the plot of Bhima towards the South. It was pleaded that the plaintiffs and their forefathers had been using the plot in question for placing khors, parking trolley and agricultural implements, tethering cattle and other allied purposes. The plot also contains a large Faras tree and a grinding circle (grund). According to the plaintiffs, the property is surrounded by a kacha wall about three feet high and the defendants, being quarrelsome by nature, were attempting to forcibly take possession of the portion shown by letters ABCD in the site plan. Despite requests not to interfere with their possession, the defendants refused to desist, compelling the plaintiffs to institute the present suit.

3. Upon notice, the suit was contested by defendants No.1 to 3 and 5 to 7 by filing a joint written statement. It was asserted that the plaintiffs or their forefathers were neither owners nor in possession of the land in dispute and that the defendants themselves were in possession of the suit property. According to them, the land was being used for parking tractors and trolleys, storing kurari, tethering cattle and stacking firewood. The existence of any kacha boundary wall was specifically denied and it was stated that there was neither any boundary nor any 'dol' of the plot. The defendants further claimed that the predecessors-in-interest of defendant No.1 had planted the Faras tree and installed the lime grinding machine. It was pleaded that defendant No.1 had purchased the property from Smt. Bhaliya daughter of Ramji Lal through a sale



deed dated 01.03.1983 and that possession had been delivered to him at the time of sale. The maintainability of the suit and the plaintiffs' locus standi were also disputed and a plea of estoppel was raised.

4. Defendant No.4 also filed his written statement separately. He had also stated that the plaintiffs are neither owners nor in possession over the suit land. This defendant had also taken the same plea as taken by defendant Nos. 1,2, and 3 and 5 to 7 mentioned above and prayed that the suit be dismissed with costs.

5. Replication was filed, the plaintiffs reiterated the pleas taken in the plaint and controverted those taken in the written statement. It was categorically stated that Smt. Bhalian daughter of Ramji Lal was not the owner in possession of the property in dispute, rather Ramji Lal was also not the owner of the disputed property and the sale deed, if any, executed by Smt. Bhaliya is illegal and void. It was averred that the lime grinding circle was installed by the predecessors-in-interest of the plaintiffs who had constructed a residential pucca house with mixture of lime and the grinder was used for grinding the lime stones.

6. On the pleadings of the parties, the following issues were framed :

- 1. Whether the plaintiffs are owners and in possession of the plot in suit, if so, its effect? OPP.*
- 2. Whether the plaintiffs are estopped from filing the present suit by their own act & conduct?OPD.*
- 3. Whether the suit is not maintainable in the present form ?OPD.*
- 4. Relief.*

7. The parties were afforded opportunity to adduce evidence in support of their respective pleadings. The plaintiffs examined Mange Ram as PW1, Sh.

M.S. Dalal, Advocate (Local Commissioner) as PW2 and Raghbir Singh as



PW3. On the other hand, the defendants examined Ram Karan as DW1, Shamsher Singh as DW2, Kanhiya as DW3 and Bhagwana as DW4. The parties also relied upon documentary evidence, which shall be referred to at the appropriate stage.

8. Both parties were afforded full opportunity to lead evidence. Upon appraisal of the pleadings and evidence, the learned Trial Court concluded that the plaintiffs had successfully proved their possession over the suit property, primarily on the basis of long-standing user and identifiable physical features at the spot. The evidence showed that the land had been used by the plaintiffs and their forefathers for tethering cattle, parking tractors and storing manure. A significant circumstance noticed by the Court was the presence of a grinding circle (grund) on the plot. The Trial Court observed that the plaintiffs' house, stated to be about 40 years old, was constructed with lime mortar which ordinarily requires a grinding circle for preparation of lime, whereas the houses of the defendants were constructed with mud mortar. On this basis, the Court inferred that the grund had been installed by the plaintiffs' predecessors. This conclusion was further supported by the report of the Local Commissioner, which indicated that the disputed portion formed part of the plaintiffs' larger plot and that there was no partition at the spot.

9. Conversely, the Trial court rejected the defendants' claim of title, which was based on a 1983 sale deed from Smt. Bhaliya. The court held that the defendants failed to prove that the disputed site actually fell within Khasra No. 735, a fact they neither specifically pleaded nor verified through official demarcation. Additionally, the defendants' claim that a relative named Gariba had installed the grund was discredited when pedigree tables proved no such person existed in the family line. Consequently, the learned Trial court decreed



the plaintiffs suit for permanent injunction restraining the defendants from interfering with possession of the plaintiffs in the suit property shown by letters A.B.C.D. and shown in red colour in the site plan Ex.PW1/1.

10. Aggrieved by the said judgment and decree, the appellants–defendants preferred an appeal before the learned Additional District Judge, Rohtak. The First Appellate Court held that the appellants failed to establish that the disputed site formed part of Khasra No.735, particularly when the boundaries mentioned in the sale deed (Ex. D1) did not tally with the boundaries reflected in the Local Commissioner’s report (Ex. PW2/1) and the site plan Ex. PW1/1. The Court further observed that no demarcation had been sought by the defendants to establish the identity of the land allegedly purchased by them. Finding no infirmity in the appreciation of evidence by the Trial Court, the appeal was dismissed and the decree for permanent injunction was affirmed.

11. Disputing the determinations of the learned Additional District Judge, Appellants-defendants filed the present appeal. Upon its admission, notices were issued, following which the respondent, through their counsel, appeared and opposed the appeal. The records of the courts below are accessible on DMS for thorough examination and adjudication.

CONTENTIONS

12. Learned counsel appearing for the appellants-defendants primarily contended that the plaintiffs had no right, title, or interest in the suit property and were never in possession of it. They argued that the plot in question actually belonged to Smt. Bhaliya, daughter of Ramji Lal, and that Defendant No. 1 had legally purchased it from her via a registered sale deed dated March 1, 1983 (Ex. D1). To support their claim of title, they relied on revenue records and pedigree tables (Ex. D2 to D7) to show Smt. Bhaliya’s ancestral right to the



land, specifically asserting it was part of Khasra No. 735. Furthermore, the defendants contested the physical evidence on site, claiming that the grund (grinding circle) had been installed by their own predecessor-in-interest, Gariba, and that they were the ones actively using the land for parking tractors, storing firewood, and tethering cattle. They argued that the suit for permanent injunction was not maintainable and that the plaintiffs were estopped from filing it due to their own conduct in allowing the appellants-defendants to use the land without prior objection.

13. Learned counsel for the respondents–plaintiffs submitted that the judgments and decrees passed by both the courts below do not suffer from any perversity or illegality. It was contended that the plaintiffs are owners in possession of the suit property and have been using the same since the time of their forefathers. Reliance was placed upon the specific dimensions and boundaries of the plot and the physical features existing at the spot, including the Faras tree, khors and the grinding circle of long standing. It was further argued that the plaintiffs’ ancestral house had been constructed with lime mortar, which necessitated the use of the grund found on the plot, whereas the houses of the defendants were constructed with mud mortar.

14. Learned counsel for the respondents further relied upon the Local Commissioner’s report (Ex. PW2/1), which concluded that the portion claimed by the defendants formed an integral part of the plaintiffs’ plot and that no partition existed at the spot. It was also argued that the defendants’ claim of title on the basis of sale deed Ex. D1 is untenable, as the said sale deed neither specifies that the disputed plot forms part of Khasra No.735 nor do the boundaries mentioned therein correspond with the boundaries of the suit property. It was further pointed out that the defendants did not seek any



demarcation to establish that the land allegedly purchased by them overlapped with the disputed site. On these premises, it was contended that the impugned judgments and decrees are well-reasoned and call for no interference by this Court.

OBSERVATIONS AND FINDINGS

15. I have heard learned counsel for the parties and considered their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The entire record has been meticulously analyzed to determine whether the impugned judgment and decree suffer from any legal infirmity or error justifying interference by this Court.

16. 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.

17. The testimonies of PW1 Mange Ram, PW2 Sh. M.S. Dalal, Advocate (Local Commissioner) and PW3 Raghbir Singh, as well as those of DW1 Ram Karan, DW2 Shamsheer Singh, DW3 Kanhiya and DW4 Bhagwana, have been examined along with documents Ex. PW1/1, Ex. PW2/1, Ex. PW2/2 and Ex. D1 to Ex. D7. Upon consideration of the said material, this Court finds no infirmity in the appreciation of evidence by the learned Trial Court, as affirmed by the



learned First Appellate Court.

18. The plaintiffs' case rests primarily on long-standing possession coupled with identifiable physical features at the spot. PW1 deposed that the plot was in possession of their forefathers and thereafter in their possession, where they tether cattle, park tractor-trolleys, store manure and maintain khors. He further stated about the existence of a grund used for grinding lime and the construction of their house with small bricks and lime mortar. PW3 corroborated the possession and boundaries. Most importantly, the Local Commissioner, PW2, in his report Ex. PW2/1 and site plan Ex. PW2/2, found that the portion shown as B.C.D.E. was part and parcel of the larger plot of the plaintiffs and that there was no partition between the alleged disputed portion and the remaining land. The entire plot was found bounded by an earthen 'dol'. The site plan prepared by him tallied with Ex. PW1/1. The defendants could not successfully impeach this report and, rather, admission was made by DW 1 Ram Karan that the site plan Ex. PW1/1 was correct according to the spot. This materially strengthened the plaintiffs' case regarding identity and possession. Additionally, the defendants failed to bring on record any material to discredit the local commissioner's spot observations regarding the 'dol' (earthen boundary) encompassing the entire suit property.

19. The existence of the grund is admitted by both sides. The dispute was regarding its installation. The evidence on record shows that the plaintiffs' house was constructed about 40–45 years ago with small bricks and lime mortar, a fact admitted by DW3 Kanhiya. It also stands admitted that the grund is of long existence. Conversely, the houses of Smt. Bhaliya and the defendants were kachha and constructed with mud mortar. In these circumstances, the inference drawn by the learned Trial Court that the grund must have been



installed by the forefathers of the plaintiffs at the time of construction of their lime mortar house is a natural and reasonable conclusion. The plea that it was installed by one Gariba was neither pleaded in the written statement nor supported by the pedigree tables Ex. D5 and Ex. D6, and was rightly disbelieved as an afterthought. The admission of DW3 Kanhiya assumes significance. He admitted that the plaintiffs' house was constructed with small bricks and lime mortar, whereas the houses of the defendants were constructed with mud mortar. In these circumstances, the presence of the grund supports the inference drawn by the learned Trial Court that it was installed in connection with the construction undertaken by the plaintiffs forefathers.

20. The defendants' claim of possession is founded upon sale deed Ex. D1 dated 01.03.1983 executed by Smt. Bhaliya. However, Ex. D1 does not specify that the land sold formed part of Khasra No. 735, nor do its boundaries tally with the suit property as found at the spot. Although reliance was placed upon revenue records Ex. D2 to Ex. D4 and pedigree tables Ex. D5 and Ex. D6 to show inheritance of share by Smt. Bhaliya, the defendants failed to plead specifically that the disputed site formed part of Khasra No. 735 and fell to her share. No demarcation was conducted to establish the identity of the land allegedly purchased. Having asserted title on the basis of purchase, the onus squarely lay upon the defendants to establish identity and lawful possession and the same had not been discharged.

21. As regards the measurements and identity of the suit property, the learned courts below have recorded that the plaintiffs described the plot with specific dimensions and boundaries and produced site plan Ex. PW1/1, which was found to tally with the site plan prepared by the Local Commissioner. The

Local Commissioner reported that the portion shown by letters B.C.D.E. was



part and parcel of the plaintiffs' plot and that there was no partition between the said portion and the remaining land. On the other hand, the defendants claimed that the plot in dispute formed part of Khasra No. 735 and asserted title on the basis of sale deed Ex. D1. However, although the said sale deed specifies certain measurements and boundaries, the same do not correspond with the property found at the spot, thereby failing to establish any nexus between the land conveyed under Ex. D1 and the site in dispute. The courts below have further noticed that no demarcation was conducted by the defendants to establish that the disputed portion formed part of the land allegedly purchased by them. On these premises, it was rightly concluded that the defendants failed to prove the identity of the land claimed by them.

22. On the cumulative appreciation of oral testimonies, the Local Commissioner's report, the admitted long existence of the grund, the nature of construction of the respective houses, and the failure of the defendants to establish identity of the land purchased under Ex. D1, both the courts below concurrently concluded rightly that the plaintiffs are owners in possession of the suit plot and that the defendants failed to prove either title or lawful possession over the suit property shown by letters A.B.C.D. and in red colour in the site plan Ex.PW1/1. These findings are based on proper appreciation of evidence and correct application of the burden of proof.

23. In view of the foregoing discussion, this Court finds no ground to interfere with the concurrent findings recorded by the learned Trial Court and affirmed by the learned Additional District Judge. The findings are based on proper appreciation of evidence and do not suffer from any illegality or perversity warranting interference in second appeal. Consequently, the judgments and decrees dated 29.03.1994 and 17.04.1996 passed by the courts

below are affirmed and the present Regular Second Appeal, being devoid of merit, is **dismissed**.

24. Since the main appeal stands decided, all pending miscellaneous application(s), if any, also stand disposed of.

06.03.2026

Poonam

(VIRINDER AGGARWAL)
JUDGE

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