



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1887-2019 (O&M)

Date of decision: 11.03.2026

Sher Singh

...Appellant(s)

Vs.

Isham Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Navmohit Singh, Advocate
for the appellant.

Mr. Sanjay Verma, Ms. Neha and
Ms. Yogita Soni, Advocates
for the respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by defendant No.1 against the concurrent judgments and decrees of the learned District Courts; whereby suit filed by the plaintiff/respondent no.1 herein, for mandatory injunction and permanent injunction, has been decreed by both the District Courts.

2. Brief facts of the case are that the plaintiff had filed a civil suit seeking mandatory injunction directing the defendants to remove illegal construction from the portion of the street; **and** further a decree of permanent injunction restraining the defendant no.1 from raising any type of construction over the suit land as mentioned in para 1 of the plaint forcibly and illegally in any manner, now or in future.



3. It was the pleaded case of the plaintiff in the plaint that inhabitants of the village including the plaintiff are facing inconvenience in ingress and outgress to their houses due to the illegal act and conduct of the defendants. Predecessor-in-interest of the plaintiff, namely, Chamela was the owner in possession of Bara comprised in khasra No. 1272/2 (0-15); and now the plaintiff-Isham Singh, son of Chamela alongwith Mohinder, Nafe Singh, and Sandeep are owners in possession to the said Bara. While defendant No.1 is owner in possession of Bara comprising in khasra No. 1235; defendant No. 2 is the owner in possession of bara comprised in khasra No. 1236 which are abutted above the said rasta as fully mentioned in para 1 of the plaint.

4. It was further pleaded that previously one Lajja Ram had filed an application under Section 7(2) of the Punjab Village Common Lands Act against the defendants and father of the plaintiff in which case demarcation was conducted and it was found that father of the plaintiff was not in illegal and unauthorized possession. On the basis of the said Demarcation Report dated 17.04.1999, ejectment order dated 13.05.1999 was passed against the defendants. Execution was filed against the defendants; and Court of Assistant Collector 1st Grade, Kaithal had issued warrants of possession in respect of the land mentioned in para 1 of the plaint. Pursuant to the same, defendants had handed over vacant possession of the above said land vide rapat roznamcha dated 07.08.2003. However thereafter defendants had again encroached upon street/passage from which they had been previously evicted. It was



contended that defendants in collusion with defendant No.3 had again sought to raise construction upon the rasta forcibly and illegally. Defendants had been repeatedly requested not to encroach upon the street/gali/passage by raising any type of construction, but the defendants were adamant and had finally refused to do so on 05.06.2014. Hence, present suit was filed on 03.07.2014.

5. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Kaithal had decreed the suit of the plaintiff vide judgment and decree dated 07.04.2017 in the following terms: -

“In sequel to my findings in the above stated issues the suit of plaintiff succeeds and is hereby decreed. A decree for mandatory injunction is passed in favour of plaintiff and defendants are directed to remove the illegal construction from the portion of the street as per demarcation report Ex-PA and handover the vacant possession to gram panchayat within 2 months from the date of judgment. Further defendants are restrained from raising any type of construction over the suit property detailed in para no. 1 of the plaint forcibly and illegally. Parties are left to bear their own costs. Decree sheet be prepared. File be consigned to the records after due compliance.”

6. The Civil Appeal filed by the defendant No.1 was dismissed with costs by the learned District Judge, Kaithal vide judgment and decree dated 27.02.2019. Hence, the present second Appeal by the defendants.



7. Learned counsel for the appellants assails the impugned judgments and decrees of the learned District Courts by raising two-fold submission to the effect that learned District Courts have found that the appellants had encroached upon the suit property on the basis of the Report of the Local Commissioner. However, in terms of the judgment of this Court passed in **RSA-3124-2017** titled as **Mahabir Singh vs. Ram Dayal (since deceased) through his LRs**; the said Report of the Local Commissioner could not have been relied upon as the Local Commissioner has not stepped into the witness box to prove the same. Ld. Counsel refers to the relevant extract of the said judgment wherein it is held as under: -

“.....The report of the Local Commissioner has not been accepted as legal evidence on account of non-production of its maker. The plaintiff did not call the Local Commissioner as a witness to prove the demarcation report and whether it had been carried out in accordance with law and the procedure prescribed by the Punjab and Haryana High Court Rules and Orders.

3. The lower appellate court was not wrong in observing that the defendant had a valuable right to cross-examine the Local Commissioner if brought as a witness by the plaintiff to assess the genuineness of the report. The plaintiff blames his counsel, but he must equally blame himself when in the cross-examination, he admitted that he does not know who had demarcated the suit property nor he know the time and date of the demarcation of the suit property by the Local Commissioner.”



8. Learned counsel for the appellants further submits that the report of the local commissioner cannot be looked into for various reasons. The demarcation has to be carried out in accordance with the Rules framed under the Punjab Land Revenue Act and the Instructions contained in Vol.1 Chap 1 (i) of the procedure in Hadd Shikini cases by the Rules and Orders of the Punjab & Haryana High Court on the subject of demarcation of land. Demarcation cannot be made unless revenue records namely jamabandis, field book, masavi, mutation with tatimas and Aks lattha are seen and examined by the Local Commissioner. In the instant case, no evidence was produced by the appellants to support a finding that at the time of the alleged demarcation the above documents were available with the revenue official who conducted the demarcation and had consulted such vital documents. Secondly the report has been prepared without any site plan. Therefore, the report is not admissible at all. Thirdly the person who has prepared the report has not been made a witness and has not been examined. Fourthly the objections were filed by the defendants and were not considered by the court below and therefore the report of local commissioner cannot be read in evidence. It is contented that although the appellants had duly files objections to the Report of the Local Commissioner, learned Trial Court has incorrectly recorded in para 17 of the judgment dated 07.04.2017 to the following effect: -

“..... It is further pertinent to mention here that no objections were filed against the report of local commissioner



by defendants pointing out any biasness towards defendants.”

9. It is contended that the said findings of the learned District Courts are incorrect and contrary to the record as the appellants had duly submitted objections to the Report of the Local Commissioner. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees be set aside.

10. *Per contra*, learned counsel for respondent No.1/plaintiff vehemently opposes submissions made on behalf of the appellants and submits that 3 pucca points could not be taken while demarcating the land as Local Commissioner had given categorical Report that the suit land was gair mumkin gali situated in residential area. It is further submitted that non-appearance of the Local Commissioner in the witness box does not adversely affect the case of the plaintiff in view of the fact that appellants are not the owner of the suit land. As such, appellants have no right to encroach upon the same.

11. Learned counsel further draws attention of this Court to the findings as recorded by the First Appellate Court in its judgment dated 27.02.2019 to submit that the said findings, on the basis of a previous suit filed by the plaintiff, remain unrebutted. It is accordingly prayed that the present appeal is without merit and deserves to be dismissed.

12. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellants.



13. The undisputed facts on record are that the suit land/rasta measuring 2K 4M is comprised in Khewat No. 1863, Khatoni No. 2245 and khasra No. 1255, as per Jamabandi for the year 2011-2012. Admittedly Gram Panchayat is the owner of the said land. To resolve the controversy and to ascertain the position on the spot, Local Commissioner was appointed by Court order; who has submitted his Report Ex.PA. The contention of the appellants that Report Ex.PA is liable to be rejected as 3 pucca points were not taken while conducting the demarcation is without merit as it is not disputed that the suit land is situated in gair mumkin gali and in residential area; and, therefore, 3 pucca points could not be taken. Contention of the appellants that objections filed by them, were not considered by learned District Courts is also incorrect as despite repeated Court queries, learned counsel for the appellants has been unable to point out, or refer to any such objections filed by the appellants from the lower Court record. Learned counsel for the appellants is unable to give details as to on what date or before which Court, what objections have been filed. Relevant findings of learned Trial Court in judgment dated 07.04.2017 are as follows: -

“..... Although, no site plan has been attached with the report of local commissioner however, local commissioner in categorical terms has stated that khasra no. 1255 which is gair mumkin gali is encroached by defendants in Southern side. This shows that even if no site plan has been attached, the report is quite clear in itself about the dimension of the encroachment and therefore, the report is not bad for want of site plan. Learned counsel for defendants pointed out that



demarcation has not been conducted by establishing 3 pucca points. Regarding this, local commissioner himself has made clear in its report that there is no survey stones available for the reason that the suit property lies within abadi of the village, therefore, even for want of 3 pucca points, report cannot be discarded. It is further pertinent to mention here that no objections were filed against the report of local commissioner by defendants pointing out any biasness towards defendants.”

14. Even otherwise, the above noted objections of the appellant to the Report Ex.PA are liable to be rejected in view of the undisputed fact that as per previous Demarcation Report Ex.PC, and order of Assistant Collector 1st Grade, Kaithal Ex.PD passed in case titled as **Lajja Ram vs. Chanda**, the learned Assistant Collector, 1st Grade, had found that the defendants had encroached upon “*gair mumkin road in khewat no. 1307.*” Learned First Appellate Court has accordingly observed as follows: -

“Thus earlier also, defendant was found in unauthorised possession which shows the conduct of the defendants that defendants were habitual of defying the law of the land. The evidence led by the appellant-defendant had failed to inspire confidence in the defence that the appellant had raised the construction in the portion owned and possessed by him. Appellant-defendant had not rebutted the report of Local Commissioner by getting the land in question demarcated through revenue official again. The banking upon the photographs by the learned counsel for the appellant in the face of the report of the Local Commissioner showing the encroachment, is of no consequence.”



15. Ld. Counsel for the appellant is unable to dispute or controvert the abovesaid concurrent findings. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in *M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559* has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellant.

16. The judgment relied upon by the appellant in **Mahabir Singh (supra)** is of no help as the same is distinguishable on facts and law.

17. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. Hence, present Second Appeal stands **dismissed**.

18. Pending applications, if any, stand disposed of.

11.03.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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