**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****130****RSA-2868-2022 (O&M)****Date of decision: 16.04.2026****Gordhan****...Appellant(s)****Vs.****Ram Pal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Gaurav Sharma, Advocate
for the appellant.

NIDHI GUPTA, J.**CM-9807-C-2022**

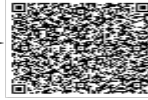
Prayer in this application filed under Section 151 CPC is for
condonation of delay of 42 days in refiling the appeal.

2. Heard.

3. For the reasons mentioned in the application which is
supported by an affidavit of the applicant/appellant, the same is allowed
and delay of 42 days in refiling the appeal is condoned.

RSA-2868-2022 (O&M)

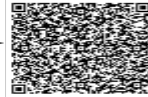
Plaintiff is in Second Appeal against the judgment of reversal;
whereby suit filed by the appellant for possession as owner of the suit
property and consequential relief of mandatory injunction and permanent
injunction, although decreed by the learned Trial Court; has been reversed
and the suit of the plaintiff has been dismissed by the learned First
Appellant Court, as follows:



“17. As a sequel to the above discussion, appeal succeeds and is hereby allowed and it is held that the respondent no.1-plaintiff failed to prove his case. Consequently, the findings as given by learned lower court to that extent are reversed and the impugned judgment and decree are set aside. Consequently, the suit of the respondent no.1-plaintiff stands dismissed. There is no order as to costs. Decree sheet be prepared accordingly. Lower court record be sent back alongwith a copy of this judgment. Appeal file be consigned to record room after due compliance.”

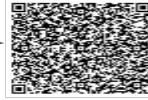
2. It is *inter alia* submitted by learned counsel for the appellant that plaintiff and defendants No. 2 and 3 are the real brothers. Their father Data Ram was owner in possession over the suit property comprised in Khasra No. 212 vide judgment and decree dated 04.03.1992. After the death of Data Ram, plaintiff and defendants No.2 and 3 were owners in possession of the property. It is submitted that on 20.11.2013, plaintiff had got demarcated his property in Khasra No. 212 and vide Report of the Local Commissioner, it was found that defendant No.1 Ram Pal had made encroachment of 44 feet x 3 feet i.e. 14.5 sq. yds. out of the land in Khasra No. 212 as marked by letters ABCD. Accordingly, plaintiff had requested defendant No.1 to remove the illegal encroachment but to no avail. Consequentially, plaintiff had filed the present suit seeking possession with relief of mandatory injunction and permanent injunction in the capacity of co-sharer.

3. Learned counsel for the appellant submits that learned First Appellate Court has non-suited the appellant merely on the ground that



Local Commissioner had prepared his Report without issuing notice to the defendants. It is submitted that Ld. Lower Appellate Court took only one issue in his impugned judgment that before conducting demarcation local commissioner Kanungo had not sent a notice to the respondent/defendant. However, in this regard this issue was never discussed or raised before the Ld. Lower court. This issue was never asked in the cross examination of the Kanungo Ashok Kumar. So, there is no need to prove this issue by the appellant/plaintiff. Even though once the plaintiff has proved his own demarcation report it was upon the defendant to rebut the same by leading sufficient evidence or moving an application for getting fresh demarcation. But defendant did not show even a single document which could prove his ownership over the disputed land. It is further relevant to submit here that Kanungo Ashok Kumar has submitted in his cross examination that at the time of demarcation the defendant was called by the Chokidar of the village. But he did not come to site at the time of the demarcation. Even though, if the defendant has not raised any issue with regard to the demarcation it was upon the defendant to move an application for fresh demarcation before Ld. Lower court or before Revenue Officer Tehsildar. The appellant has been proved his case by leading demarcation report as well as mutation of the suit property.

4. Learned counsel contends that the said ground is not sufficient to discard Report of the Local Commissioner. It is submitted that defendant has admitted in his cross-examination that he is having no



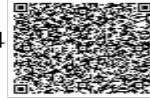
ownership proof of the disputed land; and that he has constructed his house in Bachat land which is the Panchayati land. Moreover, defendant has not even submitted the dimensions of the land that he is in possession of.

5. Learned counsel for the appellant further submits that plaintiff is co-sharer in the suit property comprising in Khasra No. 212. Plaintiff has proved his ownership vide Mutation Ex.PW1/C, which clearly reflects the ownership of the appellant over the suit property. In fact, both the District Courts have admitted ownership of the appellant over the suit property/Khasra No. 212. On the other hand, defendant has not produced a single document regarding his ownership in the suit property which clearly shows that defendant has illegally encroached upon the suit property, which is in the ownership of the plaintiff. The said facts are further fortified from the Demarcation Report dated 04.08.2013 but the learned First Appellate Court has failed to appreciate these aspects of the matter.

6. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 16.04.2021 passed by learned District Judge, Panipat be set aside.

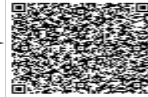
7. No other argument is raised on behalf of learned counsel for the appellant. I have heard Id. Counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

8. Perusal of the record of the case shows that learned Trial Court has decreed the suit of the plaintiff keeping in view that as per



Mutation No. 2313 Ex.PW1/C, it is reflected that Khasra No. 212 is in possession of Data Ram, father of the plaintiff in capacity of Dholidar. Learned Trial Court had further held that factum of encroachment was proved by the plaintiff vide Demarcation Report dated 04.08.2013 Ex.PW2/B. Plaintiff had proved the said Report from the testimony of PW2 Mahabir Singh, Record Keeper; as well as PW3 Ashok Kumar Local Commissioner. Learned Trial Court took note of the fact that no evidence was led by the defendants to rebut the said Report by moving any application for getting fresh demarcation done. Accordingly, learned Trial Court has observed that relief of possession cannot be denied to the plaintiff *"just because he also appears to be in possession of more land than he is entitled to, as a person of whose land the plaintiff is in encroachment or possession can any time proceed against him to get the same vacated."* Consequentially, suit of the plaintiff was decreed.

9. However, in holding as above, learned Civil Judge (Junior Division) Samalkha has lost sight of the fact that it is admitted fact on record that Local Commissioner Ashok Kumar PW3 has not prepared the Report Ex.PW2/B after visiting the disputed site in the presence of defendant No.1. The learned First Appellate Court has given a categorical finding that Report Ex.PW2/B submitted by the Local Commissioner, cannot be relied upon for holding that defendant No.1 was in unauthorized occupation of any part of the disputed property as the said Report has been prepared without prior notice of demarcation to defendant No.1, by any other official from the revenue department.



Plaintiff had also failed to prove that the said demarcation had been carried out in accordance with instructions or guidelines issued by Financial Commissioner, Haryana; and also in accordance with Rules and Orders issued by this Court in Volume-1. The said Rules and Orders of this Court were not complied with by the Kanungo Ashok Kumar PW3 while conducting the demarcation. Even the complete identification of the property which was to be demarcated, has not been mentioned by the Local Commissioner in his Report. All these facts have been admitted by the Local Commissioner in his evidence as PW3. PW3 has admitted in his cross-examination that he has not mentioned the Khewat and Khatoni numbers in his Report; nor were the same mentioned in the application. PW3 has also admitted that he has only seen copy of Jamabandi of concerned property at the time of conducting demarcation. Even further, PW3 has admitted that the said copy of Jamabandi was not made part of the Report prepared by him. Thus, it cannot even be ascertained as to whether Local Commissioner had considered/consulted the relevant Jamabandi while conducting demarcation.

10. The said Report Ex.PW2/B can also not be relied upon on account of the fact that neither in the Report Ex.PW2/B nor in his deposition, PW3 has disclosed the specific numbers of those survey points or point their specific identification. The Report also does not reveal let alone prove that Kanungo has consulted any revenue record; or that any village map was prepared during the land settlement while conducting demarcation proceedings. The Report Ex.PW2/B also did not show that

PW3 has consulted any Map on the square system and had reconstructed the sequence in which the disputed land is situated. The Report even does not reveal whether Aks Shijra of the dispute property, was consulted or not. Clearly therefore, Demarcation Report Ex.PW2/B could not have been relied upon while decreeing the suit of the plaintiff as the same was not worthy of reliance; and in actual fact, ought to have been rejected in view of the facts and findings noted above.

11. The record does not reveal that plaintiff had led any other evidence to prove his case.
12. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.
13. In view of the above, I find no error in the judgment dated 16.04.2021 passed by learned District Judge, Panipat. The present Regular Second Appeal is hereby **dismissed**.
14. Pending applications, if any, stand disposed of.

16.04.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(NIDHI GUPTA)

JUDGE