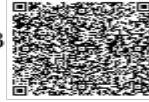
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****137****RSA-1893-2025 (O&M)****Date of decision: 10.02.2026****Ved Kaur****...Appellant(s)****Vs.****Joginder Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Deepanshu Mehta, Advocate for the appellant.*************NIDHI GUPTA, J.**

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned District Courts; whereby suit filed by the appellant for declaration alongwith consequential relief of permanent and mandatory injunction, has been dismissed by both the District Courts.

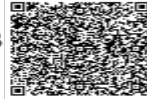
2. The present suit has been filed by plaintiff against defendant seeking the relief of declaration that plaintiff is owner in possession of the plot measuring 209 square yards situated in Khewat No. 1248, Khatoni No. 2055, Khasara No. 14434/1570, 15900/1579, 4524/1573, Eastern Side, Near Jind Bye Pass Road, Rohtak (hereinafter referred to as 'the suit property'). Further relief of permanent injunction was sought restraining the defendant from raising any construction on the encroached portion. Further, relief of mandatory injunction was sought, thereby directing the defendant to remove and vacate the encroached portion of the land. It was averred in the plaint that plaintiff had purchased the suit property



measuring 209 sq.yds. However, defendant intends to interfere in the peaceful possession of the suit property and has encroached upon part of the suit property. Plaintiff had reported the matter to the police. However, to no avail. Accordingly, present suit was filed on 17.03.2018.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), at Rohtak had dismissed the suit of the plaintiff with costs vide judgment and decree dated 11.05.2022. The Civil Appeal preferred by the plaintiff was dismissed by the learned Additional District Judge, Rohtak vide judgment and decree dated 29.03.2025. Hence, the present second appeal by the plaintiff.

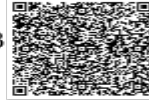
4. It is *inter alia*, submitted by learned counsel for the appellant that the learned District Courts have failed to appreciate that plaintiff had bought the suit property measuring 209 sq.yds. for valuable sale consideration through registered Sale Deed dated 02.12.1998. The boundary and dimension of the suit property are duly mentioned in the plaint. The ownership and possession of the appellant over the suit property has never been disputed by the respondent. In fact, in the written statement, the respondent has admitted ownership and possession of the appellant over the suit property. Yet, appellant has been non-suited. Learned counsel argues that the District Courts have failed to appreciate that registered Sale Deed which forms the basis of the appellant's title, has never been challenged by the respondent on ground of fraud or misrepresentation. It is submitted that once the execution and contents of the registered document have been admitted, the onus had



shifted upon the defendant to disprove the appellant's title, which burden he miserably failed to discharge. It is contended that in the situation, learned District Courts have committed serious error in placing unwarranted burden upon the appellant to establish facts already conclusively proved by documentary evidence. It is contended that in view of the fact that defendant had failed to establish a better title, decree for possession and injunction ought to have followed as a matter of course.

5. Learned counsel for the appellant further submits that the Trial Court has failed to exercise its discretion judiciously by not appointing a Local Commissioner for the purpose of demarcation during the trial proceedings, despite clear pleadings and dispute regarding encroachment. This failure resulted in non-ascertainment of the actual position at the spot and deprived the appellant of an essential opportunity to prove her case.

6. It is further submitted by learned counsel for the appellant that the learned courts below have grossly erred in law and on facts by not appreciating that minor discrepancies in the measurement of the property cannot overshadow or defeat the substantive ownership rights derived from a duly registered sale deed. The identity of the property, as demarcated by clear and undisputed boundaries mentioned in the sale deed and supported by the site plan filed with the plaint, stood firmly established. It is a settled principle of law that in case of any inconsistency between area measurements and boundary descriptions, the boundary descriptions shall prevail. The learned District Courts have failed to apply

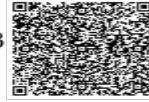


this settled proposition, thereby causing serious prejudice to the appellant's established ownership and possessory rights.

7. Learned counsel for the appellant further submits that the subsequent appointment of a Local Commissioner by the appellate court during the pendency of the appeal, and the reliance on the said report, has also caused grave prejudice to the appellant, inasmuch as the said report is not in conformity with the actual spot position, is not supported by prescribed procedure, and its conclusions are vague and non-speaking. The appellate court erred in placing reliance upon such a flawed report, despite objections raised by the appellant.

8. It is further submitted by learned counsel for the appellant that the learned appellate court grossly erred in dismissing the application filed under Order XLI Rule 27 CPC read with Section 151 CPC, wherein cogent and justifiable grounds were raised for leading additional evidence, particularly that the plaintiff, being an illiterate lady, could not appear before the trial court due to health and family issues and her then-counsel failed to guide her properly. Both courts failed to adopt a liberal and justice-oriented approach, and wrongly rejected the request for additional evidence which was essential for just adjudication of the case.

9. Learned counsel for the appellant relies upon judgment of Hon'ble Supreme Court passed in **Civil Appeal No. 1760 of 2022** titled as '**Sanjay Kumar Singh vs. The State of Jharkhand**, decided on 10.03.2022 to submit that in the said judgment, it has been held by Hon'ble Supreme Court that "*.....the admissibility of additional evidence does not depend*



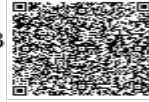
upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.....” Learned counsel contends that in the present case, additional evidence sought to be led by the appellant was necessary to enable the learned First Appellate Court to pronounce the judgment and application of the appellant could not have been dismissed.

10. Learned counsel for the appellant further submits that the learned courts below erred in ignoring that the husband of the plaintiff had duly appeared and led evidence as PW-1 on behalf of the appellant and supported the case in entirety. The evidence so recorded was not properly considered and appreciated by the courts, which led to an erroneous finding that the plaintiff failed to prove her case.

11. It is accordingly prayed that the present Appeal be allowed; and impugned judgments and decrees of the District Courts be set aside.

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

13. First and foremost, it is to be seen that the plaintiff has failed to step into witness box to plead and prove her case. Moreover, plaintiff is claiming title over the suit property vide Sale Deed dated 02.12.1998.



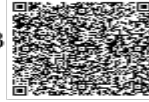
However, despite repeated Court queries, learned counsel for the appellant is unable to inform this Court as to why the said Sale Deed was not produced by the appellant before the learned District Courts. It is my view that in the absence of the Sale Deed and in view of the fact that plaintiff herself has not stepped into witness box, plaintiff has miserably failed to establish her case/title that she is owner in possession of the suit property measuring 209 sq.yds.

14. Record further reveals that except for the Site Plan, plaintiff had produced nothing on record to prove the alleged encroachment. Further except the oral evidence of the husband of the plaintiff, there is no material on record to substantiate her version that defendant has encroached on the suit property. Admittedly, plaintiff had also failed to demarcate the suit property to prove her case and to prove the alleged encroachment. It is trite law that plaintiff has to prove her own case.

15. To the contrary, defendant had succeeded in proving that he had purchased 1/6th share of adjoining plot measuring 1210 sq.yds. vide Sale Deed dated 10.05.1991 i.e. prior to the plaintiff. Thus, defendant was owner in possession of his plot measuring 202 sq.yds. since 1991. Accordingly, defendant had vehemently denied that he was encroaching upon the suit property and trying to interfere in the peaceful possession of the plaintiff over the suit property.

16. Before the learned First Appellate Court, appellant had also filed an application under Order 41 Rule 27 CPC read with Section 151 CPC.

On a Court query, learned counsel for the appellant has informed that by



way of additional evidence, appellant had wanted to examine herself and produce the demarcation done at the time of execution of Sale Deed. However, the said application of the appellant has been dismissed by the learned First Appellate Court for cogent reasons as recorded in para 21 of the judgment dated 29.03.2025 which reads as under:-

“21. So, considering the averments made in the application and the reply filed, which are seen in the light of the proper relevant facts which have bearing on the issues involved and considering the same, the averments made in the application, itself reflects that it does not fulfill the legal requirements of the provisions of order XLI Rule 27 C.P.C. The perusal of learned trial court record reflects that the present Civil Suit bearing No.CS-269-2018 has been filed by the plaintiff on 17.03.2018, after service of defendant was completed and written statement was filed, issues were framed on 16.08.2018, then from 10.10.2018 till 27.01.2020, about 9 opportunities were granted to the plaintiff to lead and complete her evidence. PW Hazari Lal, husband of plaintiff had been examined by plaintiff on her behalf in this case. On 18.12.2019, the last opportunity subject to imposition of cost was granted to the plaintiff to complete her evidence but the plaintiff neither led any further evidence nor cost paid and the evidence of the plaintiff was closed by court order dated 27.01.2020, then opportunities were granted to the defendant to lead their evidence, the defendant evidence was closed on 15.09.2021, the opportunity to lead rebuttal evidence was also granted to the plaintiff and without leading any evidence in rebuttal the same was closed and after hearing the arguments, the suit of the plaintiff was dismissed with costs vide judgment and decree dated

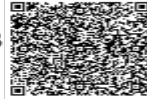


11.05.2022. The learned trial court has returned the findings on the issues involved and now filing by the present application, it transpires that the plaintiff wants to remove the deficiencies of her case of which, findings have been returned by the learned trial Court and the same cannot be allowed by way of filing the present application seeking leading of additional evidence. Ample opportunities have been granted to both the parties by the learned trial court to lead their evidence in terms of their pleadings and issues involved, the plaintiff is the master of her suit and after the case is decided, the plaintiff cannot claim that plaintiff was unaware of the legal proposition of law as in law, it is not an excuse. Moreover, the legal ingredients under Order XLI rule 27 C.P.C. has not been fulfilled as detailed in clause a, (aa) and the clause (b), so no such additional evidence or any document is required by the appellate court for the just decision of this case. So, considering the facts as appeared on record, no such additional evidence is required which will assist the court in coming to the just conclusion of deciding the appeal on merits considering the issues involved in the present appeal."

17. Accordingly, application of the appellant for additional evidence came to be dismissed for the above said reasons which do not require interference.

18. Alongwith the appeal, appellant had also filed an application under Order 26 rule 9 read with Section 151 CPC, which was allowed by the learned First Appellate Court vide order dated 17.07.2023; whereby Tehsildar was directed to demarcate the land. Pursuant to the said order,

Halqa Kanungo, Rohtak has submitted his report alongwith copy of



Jamabandi for the year 2019-2020, copy of Aks-shizra and copy of mutation, as per which, it was reported that there is no encroachment at the spot by the defendant on the property as alleged by the plaintiff. Admittedly, the said demarcation was carried out by Halqa Kanungo in the presence of the appellant. During the course of arguments, Learned counsel for the appellant has admitted that the appellant had participated in the demarcation; and no objections were filed by the appellant to the said Demarcation Report. Thus, even as per the report of Halqa Kanungo, plea of encroachment of the appellant stood falsified. Admittedly, demarcation was carried out with the help of DGPS Machine in the presence of both the parties after taking into account the relevant revenue record.

19. Thus, from the above noted facts and findings, it is clear that appellant was unable to prove any encroachment by the respondent/defendant. The aforesaid judgment in **Sanjay Kumar Singh supra** relied upon by Id. counsel for the appellant is distinguishable on facts and law and appellant cannot derive any benefit from the said judgment.

20. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

21. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. The present Regular Second Appeal is hereby **dismissed**.

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

10.02.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE