

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-3361-2023 (O&M)****Date of decision: 05.02.2026****Raj Kumari and others****...Appellant(s)****Vs.****Ram Pal and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Ranjit Saini, Advocate for the appellants.*************NIDHI GUPTA, J.**

Defendants are in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the plaintiffs/respondents for permanent and mandatory injunction, has been partly decreed.

2. It was the pleaded case of the plaintiffs in the plaint that they are owners in possession of land measuring 1K 14M. It was alleged that defendants had illegally encroached upon part of the suit land measuring $2\frac{3}{4}$ M by merging it into their boundary wall. It was further alleged that defendants are threatening plaintiffs to encroach upon the remaining land of the plaintiffs. Accordingly, suit for possession and mandatory and permanent injunction was filed on 05.10.2009.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Subdivision, Bilaspur had partly decreed the suit of the plaintiffs vide judgment and decree dated 13.10.2016, as follows: -



“10. As a sequel to my findings recorded here-in-above, the instant suit is partly decreed with costs. Accordingly, a decree for possession of the suit land to the extent of 2 ^{3/4} Marla is granted in favour of the plaintiffs and the defendants are directed to hand over the actual, physical possession of the said part (2^{3/4} Marlas) of the suit land to the plaintiffs by removing their illegal construction raised thereon. Further, the defendants are also permanently restrained from interfering in the possession of the plaintiffs over the suit property in any manner. However, the claim of the plaintiffs for unliquidated damages is dismissed. Decree-Sheet be drawn and file be consigned to records after due compliance.”

4. The Civil Appeal filed by the defendants was dismissed by the learned Additional District Judge, Yamuna Nagar at Jagadhri vide judgment and decree dated 27.07.2023. Hence, the present second appeal by the defendants.

5. The only ground on which learned counsel for the appellants assails concurrent judgments of the learned Courts below is that the defendants/appellants have been found to have encroached upon the suit land on the basis of a Demarcation Report submitted by the Local Commissioner. Learned counsel contends that the said Demarcation Report could not have been relied upon as demarcation was conducted in the absence of pucca point. It is submitted that although both the Courts have duly taken note of the fact that defendants had raised objections to the Demarcation Report yet suit of the plaintiffs has been decreed.



6. Learned counsel for the appellants submits that therefore, the impugned judgments and decrees have been passed by the Courts below without application of mind. The impugned judgments are based upon the report of the Local Commissioner which, otherwise could not have been relied upon as the demarcation was carried without ascertaining the pucca point, in utter violation of the standing order of Financial Commissioner. It is settled law that the report of the Local Commissioner which has been prepared in complete violation of the standing order of the Financial Commissioner and without ascertaining pucca point cannot be relied upon.

7. Learned counsel further submits that the appellants had filed a detailed objection to the report of the Local Commissioner which was prepared in utter violation of the Standing order of Financial Commissioner but the objection submitted by the appellants were not taken care by the courts below and instead passed the judgment and decree which are not sustainable as there is no other supporting evidence on the basis of which the suit filed by the plaintiffs can be decreed.

8. It is further submitted by learned counsel for the appellants that due to the reliance placed upon the report of the Local Commissioner, which is totally illegal, valuable rights of the appellants has been taken away. In the absence of any positive evidence suggesting that the appellants have encroached the land as has wrongly been held, the suit filed by the plaintiffs should have been dismissed but instead both the courts below have decreed the suit. It is accordingly prayed that the



present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

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

10. The only contention of the appellants is that the Demarcation Report Ex.PW2/A has been prepared without pucca point and, therefore, it could not have been relied upon. Admittedly, the said objection had been taken by the appellants in the written objections filed by them against Demarcation Report. However, the said objection of the appellants has been rightly rejected by both the Courts below as PW2 Suresh Kumar Tehsildar/Local Commissioner has explained the demarcation procedure in detail. PW2 has stated that the sides/boundaries of the pucca point were duly recorded in the Field Book which showed that pucca point had been fixed at the spot at the western wall of Khasra No. 7 of Rectangle No. 69. PW2 deposed that as pucca point was not found at the spot, therefore wall constructed on the western side was admitted to be correct and taken as pucca point at the time of demarcation; and demarcation was started from the said Wall and it was found that the appellants had encroached upon $2^{3/4}$ M comprised in Khasra No. 5/2/1 and 6/4. Clear findings have been given that Local Commissioner had tried to locate pucca thadda i.e. burji Istemal, however the same could not be traced and only thereafter constructed wall was taken as pucca point after consent of all the parties. Rather, in cross-examination of PW2 defendants



themselves had given suggestion that the said pucca point was admitted to be correct by all the persons present at the time of demarcation. Moreover, the Report Ex.PW2/A is based upon said Site Plan Ex.PW2/B. Defendants had failed to rebut the Report of the Local Commissioner. As such, sole argument of the appellants is without merit.

11. It has also come on record that PW2 Suresh Kumar Tehsildar had deposed on oath that demarcation was conducted on 28.06.2015 after serving notice Ex.PW2/D to both the parties; and prepared Attendance Sheet Ex.PW2/C of the persons present at spot; whereafter Demarcation Report Ex.PW2/A was submitted.

12. It is also to be noted that previously also, vide Reports dated 18.01.2011 and 18.11.2014, demarcation had been conducted twice, and each time the appellants were found to be in encroachment upon the suit land to the extent of 2 ^{3/4} M. The record further reveals that defendants had failed to show as to how much land is owned and possessed by them at the spot. Defendants also did not make any attempt to get their land demarcated to show they they possessed their land as per their ownership and are not in possession of excess of their ownership.

13. Last but not the least, 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***

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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 appellants.

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

15. 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**.

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

05.02.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE