



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

**RSA-1607-2015 (O&M)**

**Reserved on :-02.09.2025**

**Date of Pronouncement:-04.09.2025**

Mukesh

... Appellant

Versus

Baldev Singh

... Respondent

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**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Argued by :-

Mr. Sumit Gupta, Advocate  
for the appellant.

Mr. Animesh Sharma, Advocate  
for the respondent.

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**VIRINDER AGGARWAL, J.**

1. The appellant/defendant has instituted the present appeal challenging the judgment and decree dated 04.10.2014 rendered by the learned Additional District Judge, Jhajjar, whereby the learned First Appellate Court reversed and set aside the well-reasoned judgment and decree dated 13.08.2013 passed by the learned Civil Judge (Junior Division), Bahadurgarh.

2. Briefly stated, the facts of the present case are that the respondent/plaintiff instituted a suit for possession, along with consequential relief of permanent injunction, on the grounds that he is the owner in possession of Plot No. 1309, situated within the Awadi of Village Bhaproda,



Tehsil Bahadurgarh, District Jhajjar. The plot, as delineated in the site plan marked 'EFGD', is bounded on the **east** by Plot Nos. 1312 and 1310, on the **west** by a *Gali* and Plot No. 1308, on the **north** by Plot No. 1312, and on the **south** by Plot No. 1305 belonging to the defendant.

2.1 In the year 2011, the defendant allegedly encroached upon a portion of the plaintiff's plot and amalgamated the same with his own plot, as depicted in red and marked 'ABCD' in the site plan. The plaintiff caused the suit land to be demarcated, and the demarcation report dated 04.12.2011 revealed that the defendant had encroached upon approximately 31 square yards (measuring 23' x 12') of Plot No. 1309 by erecting a structure referred to as a '*Chabutra*'. Consequently, the plaintiff filed the suit seeking relief.

3. Notice of the suit was duly served upon the defendant, who initially appeared but subsequently chose not to participate and was accordingly proceeded against ex-parte. The plaintiff thereafter adduced evidence ex-parte, following which the learned Civil Judge, Bahadurgarh, dismissed the suit.

4. Aggrieved by the judgment and decree so rendered, the respondent/plaintiff preferred an appeal, which was allowed by the learned Additional District Judge, Jhajjar, vide the impugned judgment and decree.

5. Aggrieved by the said impugned judgment and decree passed by the learned Appellate Court, the appellant/defendant has filed the instant appeal. Notice of motion was duly issued to the respondent, who appeared through counsel.

6. I have considered the submissions made by learned counsel for the respondent but finds the same to be devoid of merit.



7. 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.

8. Learned counsel for the appellant contended that the findings recorded by the learned First Appellate Court are unsustainable and legally untenable. It is submitted that the learned Appellate Court failed to duly consider the evidence and pleadings of the parties with the requisite seriousness. Crucially, the Court overlooked that the demarcation report was not properly proved in accordance with law, as the author of the report was not examined as a witness.

8.1 Further, the learned Additional District Judge did not take into account that, at the time of demarcation, only the plaintiff and the *Sarpanch* of the village were present, and that the demarcation was conducted without adherence to the rules prescribed by the Financial Commissioner. The Additional District Judge also failed to recognize that the demarcation report had been rightly discarded by the learned Civil Judge.

8.2 Moreover, the demarcation report itself expressly states that the actual position can only be accurately determined after demarcation of all



adjoining plots, which was not undertaken. In view of these significant lapses, the findings of the learned Additional District Judge, Jhajjar, warrant to be set aside. Consequently, it is prayed that the appeal be allowed and the judgment and decree of the learned Civil Judge, Bahadurgarh, be restored.

9. Learned counsel for the respondent/plaintiff contended that there is no illegality or infirmity in the findings recorded by the learned Additional District Judge. The learned Additional District Judge, having meticulously examined the evidence on record and duly considered the pleadings of the parties, has rightly recorded the impugned findings. Accordingly, it is prayed that the appeal be dismissed.

10. Learned Additional District Judge has recorded its finding in Para Nos.11 and 12 of the impugned judgment, which reads as under:-

11. The above evidence on record was sufficient to decree the suit filed by the plaintiff, but even then the suit filed by him was dismissed by learned Civil Judge, as pointed out by learned counsel for plaintiff in his arguments. Learned counsel for respondent/ defendant failed to point out any weakness in the case of plaintiff in any manner. Plaintiff has taken the plea that defendant has encroached over his plot no.1309 on portion ABCD, which is shown in red colour. This particular site plan was slightly modified in additional evidence by filing fresh site plan Ex.A5. Before coming to the site plan tendered by the plaintiff, it is better to look into Aks-sizra of the village, which is Ex.P-4 & Ex.A-6. This particular Aks-sizra shows Khasra no. 1307 is a gali, as the same is not bounded on the western side and this fact is also mentioned in Ex.A-3 & Ex.A-4. The dimensions of rasta gitwar in Khasra no. 1307 are as under:-

**East: 30 yards**

**West: 30 yards, Average 30 yards**



**South: 60 yards**

**North: 54 yards, Average 57 yards.**

i.e. total area of 190 sq. yards. On the east side of this plot no. 1307, there exists plot no.1309 belonging to plaintiff and 1305 belonging to defendant. As per Field Book, dimensions 74 feet, West: 72 feet, of plot no. 1309 are in East: average 73 feet, South: 64 feet, North: 44 feet, average 54 feet and the dimensions of plot no.1305 are shown as East: 85 feet, West: 58 feet, average: 66 feet, South: 190 feet, North: 85 feet, average 107 feet, total area 785 sq. feet. Particular dimension of plot no.1309 or 1305 matches with fresh site plan Ex. A-5. However, due to encroachment on the portion ABCD of plot No.1309 belonging to plaintiff, western side of plot of plaintiff is reduced to 60 feet from 72 feet and the southern side was reduced to 41 feet from 64 feet. Thus, defendant has encroached to the extent of 12 feet x 23 feet on the plot of plaintiff at portion ABCD. The said encroachment over the portion of plot of plaintiff was stated to be made by the defendant in the year 2011. There is nothing on record to controvert the above evidence.

12. In view of above evidence on record, the impugned judgment and decree is hereby set aside by allowing the present civil appeal. Respondent/defendant is hereby directed to immediately vacate the portion on the plot of appellant-plaintiff in portion ABCD shown in red colour in the site plan Ex.A-5, and to handover the vacant possession of the same within two months after expiry of period of limitation. Both the parties to bear their own costs. Decree sheet be drawn accordingly.

11. Learned counsel for the appellant has submitted that the learned Court rightly observed that the plaintiff failed to prove the exact dimensions of Plot No. 1309. The Aks-Sizra clearly indicates the presence of a '*Rasta*'



or vacant space between Plots No. 1309 and 1305, visible on the southern side of Plot No. 1309. A comparison of the site plan (Ex.P1) with the Aks-Sizra (Ex.P4) demonstrates that the area marked 'ABCD' on the site plan lies adjacent to the plot delineated in Ex.P4. Therefore, the learned Civil Judge concluded that the plaintiff failed to establish that the dimensions of the land and the portion marked 'ABCD' were indeed part of the plaintiff's property.

11.1 The record further reveals that the learned Civil Judge discarded the demarcation report primarily because the author of the report, Om Kumar, was not examined as a witness.

11.2 Learned counsel for respondent argued that report Ex.P6 was duly proved on record and learned Additional District Judge, has rightly relied upon the same. While it is true that Om Kumar, who conducted the demarcation, was not examined, the plaintiff did produce the testimony of the Kanoongo, who identified Om Kumar's signatures on the demarcation report. The demarcation report (Ex.P6) is an official document, and a certified copy was duly placed on record.

11.3 He further contended that the learned Civil Judge's rejection of the demarcation report on the basis that the Tehsildar's order dated 20.09.2011 was not proved through the examination of any official from the concerned office is misplaced. It is well-established that an order passed by the Tehsildar, who is the presiding officer of the Revenue Court, can be proved by tendering a certified copy, without the necessity of calling for viva-voce evidence from the office.



11.4 He further contended that the learned Civil Judge misinterpreted the contents of the demarcation report. A perusal of Ex.P6 reveals that before commencing demarcation, the official first established three permanent 'Pucca' reference points; the northwest corner of Plot No. 1312, the south point of Plot No. 1314, and a Pucca boundary wall on Plot No. 1308. These reference points were verified and accepted by the persons present at the site. Subsequently, the official marked the four corners of Plot No. 1309 and discovered that an area measuring approximately 31 square yards (23' x 12') had been illegally encroached upon by Mukesh and Uma Chand through the construction of a boundary wall.

11.5 It was further argued that it was also noted in the report that, during the measurement of Plots No. 1305 and 1306, the respective owners did not permit the official to enter their plots for measurement. The learned Civil Judge discarded the demarcation report on the ground that the official had reported extensive construction over the plots, making it difficult to ascertain which plot had lesser or excessive area. However, the official had nonetheless specifically demarcated the portion of Plot No. 1309 belonging to the respondent/plaintiff and concluded that the 31 square yard area marked 'ABCD' had been encroached upon by the appellant/defendant.

11.6 It is evident from the record that the appellant, Mukesh Kumar, absented himself during the demarcation process and obstructed the official from measuring his plot. The learned Additional District Judge rightly differed from the finding of the learned Civil Judge, observing that the demarcation report is consistent with the Aks-Sizra, thereby lending credibility to the plaintiff's claim.



12. I do not find any substance in contentions of learned counsel for respondent/plaintiff as it is pertinent to note that during the pendency of the appeal, respondent/plaintiff filed an application seeking permission to adduce additional evidence, which was allowed. Consequently, a new site plan (Ex.A5) was substituted in place of the original site plan annexed to the plaint at the time of filing the suit. The learned Additional District Judge, while recording its findings, observed in paragraph 12 of the impugned judgment that the respondent/defendant was directed to immediately vacate the portion of the plot belonging to the appellant/plaintiff, specifically the area marked 'ABCD' in red on the site plan Ex.A5.

12.1 However, it is significant that the plaint was not filed in accordance with Ex.A5, nor was demarcation conducted pursuant to the substituted site plan. The suit specifically claimed possession of the portion 'ABCD' as shown in the site plan attached to the plaint, yet the learned Additional District Judge granted relief in respect of the area marked 'ABCD' in Ex.A5, which was introduced only during the appeal and was not part of the original plaint.

12.2 Further, it is established on record that the revenue official, Om Kumar, who conducted the demarcation (Ex.P6), did not measure Plot No. 1305, which is owned by the appellant/defendant. In such circumstances, it is impermissible for him to conclude that the defendant had encroached upon 31 square yards of Plot No. 1309 belonging to the plaintiff. The demarcation report could only have concluded that the area in possession of the plaintiff within Plot No. 1309 was deficient by 31 square yards. Without demarcating the defendant's plot, it is unsustainable to assert that the



defendant was in possession of any part of the plaintiff's land. It was not possible for official to set up area of plot No.1309 without entering the plot, in which area encroached has been amalgamated. It is clear that Om Kumar has not examined the plot No.1305 and he was not conducted any measurement of plot No.1305. In these circumstances, total area of plot No.1309 cannot be demarcated nor it can be concluded that encroached area of plot No.1309 has been included in plot No.1305.

12.3 Accordingly, the demarcation report was rightly discarded by the learned Civil Judge (Junior Division). The learned Additional District Judge erred in basing its findings on material that was not part of the original plaint and also misinterpreted the demarcation report (Ex.P6). Moreover, the report (Ex.P6) was not proved in accordance with law, a conclusion correctly reached by the learned Civil Judge.

13. It was incumbent upon the plaintiff to produce the revenue officials who conducted the demarcation, thereby enabling the learned Civil Judge to understand the manner in which the proceedings were carried out. The failure to do so renders the findings recorded by the learned Additional District Judge unsustainable. Accordingly, the appeal filed by the appellant/defendant is allowed, and the judgment and decree passed by the learned Additional District Judge, Jhajjar, are hereby set aside.

13.1 Given that the dispute involves alleged encroachment and the purported amalgamation of adjoining land, it is imperative that the land be properly demarcated to conclusively resolve the controversy between the parties. In exercise of the powers vested under Rule 23-A of Order 41 of the CPC, this Court feels that a retrial is necessary to effectively determine the



dispute. Since the respondent/plaintiff claims encroachment over a portion of his plot, which the appellant/defendant denies, a proper demarcation report of both plots is indispensable for a fair and conclusive decision.

13.2 The learned Civil Judge rightly observed that the demarcation report relied upon by the plaintiff was inconclusive; this Court concurs with that assessment. To ensure a just determination of the controversy, a fresh demarcation must be undertaken with due notice and opportunity afforded to both parties. The matter is therefore remanded to the learned Civil Judge (Junior Division), Bahadurgarh, to be decided afresh.

13.3 The learned Civil Judge is directed to appoint a competent revenue official to conduct a fresh demarcation of Plot No. 1309, owned by the respondent/plaintiff, and Plot No. 1305, owned by the appellant/defendant. Both parties shall be given adequate opportunity to examine the revenue official who would conduct the demarcation.

14. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

**04.09.2025**  
Gaurav Sorot

**( VIRINDER AGGARWAL )**  
**JUDGE**

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