



RSA-3952-2023 (O&M)

-1-

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

(103)

RSA-3952-2023 (O&M)

Date of decision:- 07.03.2025

Harnek Singh

...Appellant

Versus

Gram Panchayat of Village Chaklan

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Sukhdeep Kaur, Advocate
for the appellant.

...

SUVIR SEHGAL, J. (Oral)

CM-14124-C-2023

1. Prayer made in the application is for condonation of delay of 99 days in re-filing of the appeal.
2. Application is supported with an affidavit of the counsel for the appellant, wherein she has deposed that the brief was misplaced upon being returned by the Registry with some objections. It has been stated that after locating it, appeal was re-filed, which has resulted in a delay of 99 days.
3. The explanation given is satisfactory.
4. Delay of 99 days, in re-filing the appeal, is condoned.
5. Application is disposed off.



RSA-3952-2023 (O&M)

-2-

CM-14125-C-2023

6. Prayer made in the application filed under Section 149, CPC, is for permission to deposit the Court fee.
7. Counsel for the appellant submits that requisite Court fee has been affixed.
8. Accordingly, application is disposed off.
9. Time period for fixation of Court fee is extended till its actual deposit.

CM-14126-C-2023

10. Demarcation reports dated 22.05.2009, 23.12.2016, and 02.06.2017, are taken on record as Annexures A1 to A3, respectively.
11. Application is disposed off.

RSA-3952-2023 (O&M)

12. Appellant/plaintiff, is in second appeal before this court, assailing concurrent findings recorded by two Courts.
13. Appellant/plaintiff filed a suit for permanent injunction restraining the defendant and its associates from interfering in the peaceful possession of the plaintiff or from dispossessing him from the suit property located in village Chaklan, Tehsil Chamkaur Sahib, District Rupnagar, and for restraining the defendant from carving any road or passage in the property or from making any encroachment thereon. Pleaded case of the plaintiff is that he is the owner of the suit property. He had filed a suit for permanent injunction, restraining Sikandar Singh and Hari Singh, from interfering in his possession and from carving out any passage on the suit land. The suit was dismissed by the Trial

**RSA-3952-2023 (O&M)****-3-**

Court by judgment dated 24.07.2014, Ex. P3, but it was accepted in appeal by judgment dated 27.02.2015, Ex. P4, and both the defendants were restrained from interfering in the peaceful possession of the plaintiff over the suit property. However, no relief was granted to the plaintiff regarding passage in Khasra No.49. It has been averred that plaintiff's property adjoins Khasra No.49, and under the garb of constructing a road on Khasra No.49, defendant encroaching upon plaintiff's property. A demarcation of the property was conducted on 10.06.2009 by the Gram Panchayat, but it was not adhered to. Upon notice, suit has been contested by the defendant/Gram Panchayat by filing a written statement, wherein various preliminary objections have been raised. It has been stated that as there is no restraint order qua Khasra No.49, defendant/Gram Panchayat has constructed a road in the said Khasra. Reference has been made to a demarcation report dated 23.12.2016, and it has been submitted that the suit be dismissed. Plaintiff filed an replication reasserting the claim. On the basis of the pleadings of the parties, Trial Court framed issues and after the parties led evidence and were heard, Trial Court dismissed the suit by judgment dated 22.12.2021. Plaintiff remained unsuccessful in the first appeal, which was rejected by the learned Additional District Judge, Rupnagar, by judgment dated 03.05.2023, resulting in the institution of the present appeal.

14. While making a reference to the evidence produced by the plaintiff, counsel for the appellant has argued that the respondent/defendant has encroached upon plaintiff's land. It is her argument that the Trial Court has erred in ignoring the previous demarcation reports and ordering the appointment of a Local Commissioner, who submitted a report dated



RSA-3952-2023 (O&M)

-4-

02.06.2017. She has asserted that the appellant filed objections to the report, but the Courts below had not considered the objections while dismissing the suit.

15. I have heard counsel for the appellant and considered her submissions besides examining the requisitioned record with her able assistance.

16. In order to prove her case, plaintiff has stepped into the witness box as his own witness as PW1, and has examined Avtar Singh, PW2, who is a relative. It has been deposed by them that Khasra No.49, belongs to the Gram Panchayat, and the plaintiff's land adjoins this khasra. It has come in his evidence that the Gram Panchayat has already constructed a road on Khasra No.49. Parminder Singh, PW3, retired Tehsildar, has admitted that the Local Commissioner visited the site on 02.06.2017, and he admitted his signatures over the memo of presence prepared at the spot. Sukhdeep Kaur, PW4, plaintiff's daughter, has deposed on the same lines as her father. Surender Pal Singh, PW5, has produced the copies of the sale deeds as well as some record from the office of the Sub-Registrar. Defendant examined Kuldip Singh, DW1, and Gurinder Singh, DW2, member and Sarpanch, respectively, of the Gram Panchayat, who have deposed that the respondent has not encroached upon the property of the plaintiff, rather, it is the plaintiff, who has encroached upon some portion of common passage of Khasra No.49.

17. From the evidence led by the parties, it is evident that land in Khasra No.49 is "rasta sharei-aam" and it belongs to the defendant/Gram Panchayat. Plaintiff admittedly does not have any right or title over the property. Except



for the bald assertion of the plaintiff and his witnesses, there is no material to come to the conclusion that Gram Panchayat has encroached upon any portion of his property. Rather, a perusal of the demarcation report dated 02.06.2017, shows that the plaintiff has encroached upon the passage in Khasra No.49. He is, therefore, not entitled to the decree of permanent injunction.

18. As the earlier demarcation reports relied upon by the parties before the Trial Court, did not reflect the true picture, Trial Court, by orders dated 23.01.2017, and 24.03.2017, appointed Advocate, Sukhjeet Singh, as a Local Commissioner, to visit the spot along with the revenue officials and to demarcate the land and submit a report. Both the orders passed by the Trial Court are reproduced hereunder:-

Order dated 23.01.2017

*“Arguments heard. Vide my separate detailed order of even date defendant is restrained from interfere into possession of plaintiff over the suit property detailed in head note of plaintiff. However there is a dispute regarding identity/location of property because as per plaintiff the defendant is trying to encroach upon his property, so as under order 26 rule 9 CPC local commissioner can be appointed to know the exact position of the suit land. In **Kartik Chandra Nayak Vs. Bira Kishore Nayak and others, 2011(4) CCC 702 Orrisa**, it is held by the court that when the controversy is as to identification, location or measurement of the land, local investigation should be done at an early stage so that parties are aware of the report of commissioner. Accordingly to remove the ambiguity with regard to exact location of the suit property Sh. Sukhjeet Singh, Advocate, present in the court is appointed as local commissioner, who shall visit the spot along with revenue official/Tehsildar who shall demarcate the land in question and report about the existing position of the spot as well as furnishing his report regarding the identity/location of the property specifically with photographs and submit the same till 15.02.2017. The fees of the local commissioner is assessed Rs.2000/- which is to*



be borne by both the parties equally. Local Commissioner is further directed to visit the spot after giving notice to both the counsels for the parties. The expenses of the photographer would be borne by the both the parties equally.”

Orders dated 24.03.2017

“Report of local commissioner perused. As per report when the Kanngo and Patwari has started taking the demarcation of the disputed land, then the plaintiff has raised the objections that he is not agreed to demarcate the land from the Kannogo and Patwari in the absence of Tehsildar. But the court has directed the revenue official/Tehsildar to demarcate the land and Kannogo and Patwari are also revenue official who can demarcate the land in dispute. Sh. Sukhjit Singh Advocate is again appointed as Local commissioner, who shall visit the spot along with revenue official/Tehsildar, who shall demarcate the land in question and report about the existing position of the spot as well as furnishing his report regarding the identity/location of the property specifically with photographs and submit the same till 12.04.2017. The fees of the local commissioner is assessed of Rs.2000/- which is to be borne by both the parties equally. Local commissioner is further directed to visit the spot after giving notice to both the counsels for the parties. The expenses of the photographs would be borne by the both the parties equally and both the parties are directed to come present at the time of demarcation in person.”

19. Plaintiff submitted objections on 28.11.2017, to the report dated 02.06.2017 of the Local Commissioner, which were opposed by the respondent. These objections have been specifically disposed off by the Trial Court by order dated 01.09.2018, by observing as under:-

“I have heard the submissions of Ld. Counsels for the parties and have gone through the case file. From the perusal of the file it reveals that in the present case Adv. Sukhjit Singh was appointed as LC who was directed to visit the spot alongwith revenue officials to demarcate the land in question, who submitted the report in the court. Now plaintiff is taking the objection that LC has given the wrong report in connivance with the defendant. After



RSA-3952-2023 (O&M)

-7-

hearing the counsels, this court is of the view that no doubt as per the report of the LC plaintiff has encroached upon the property of Gram Panchayat and plaintiff is not satisfied with his report but this court is of the view that in “Selvi Vs. Dorathy Paul” in 2013 the court held that the evidence/report of a commissioner is not binding on the court. In fact his report is to be appreciated along with other evidence available on record in a given case. Thus, even if the local commissioner has given wrong report, the same is not binding on the court rather the court has to taken into consideration along with other evidence at the time of disposal of the case. So at this stage the application in hand/objections stands disposed off. Now, to come upon 28.09.2018 for plaintiff evidence as stay application is already disposed of.”

20. It is evident from the above that the objections of the appellant/plaintiff, against the report of the Local Commissioner, have been disposed off, therefore, her argument that they have not been considered, is rejected. Both the Courts below, have properly appreciated the evidence led by the parties and have recorded a specific finding that there is no encroachment upon the plaintiff's land and, rather, he has encroached upon a public passage. There is no illegality or infirmity in the findings recorded by both the Courts below, which are affirmed.

21. Finding no merit in the appeal, it is dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

07.03.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes