



(103)

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

RSA-2359-1992 (O&M)

Reserved on:- 05.09.2025

Pronounced on:- 11th September, 2025

Sardar (since deceased) through his LR Suresh and others

...Appellant(s)

Versus

Piare Lal (since deceased) through his LR Jal Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Rajesh Lamba, Advocate,
for the appellants.

Mr. Harsh Aggarwal, Advocate,
and Mr. Lakshya Aggarwal, Advocate,
for the respondents.

* * * *

VIRINDER AGGARWAL, J.

1. The plaintiff-respondent (Piare Lal) since deceased filed suit for permanent injunction for restraining the defendants from making any construction at point 'XY' in the plot shown by letters ABCD in the site-plan or in the alternative if the defendants succeed in raising the construction over the plot, then a decree for mandatory injunction for demolishing the same on the allegations that the plaintiff is one of the co-owner in possession of a house situated in the Abadi of village Langra, Tehsil and District Gurgaon. The same is shown as ABCD in the site plan as Ahata No. 23, Ghar No. 23 as per Shizra Khasra Pamiesh Abadi of village Langra and is bounded in the East: house of Nanak son of Chitru, situated in Ghar No. 22 which also belongs to the plaintiff

and other co-sharers, in the West: house of defendants which falls in Ghar No. 26, Ahata No. 26, in the North: open land of the plaintiff and in the South: houses of Pran Sukh and Ram Parshad and Shamlat Deh and Rasta. The defendants threatened to encroach upon the plot of the plaintiff and other co-sharers without any right or title. They intended to include the portion of the plaintiff's plot in their property by constructing a wall on it and started digging foundation shown as 'XY' in the site plan. They had collected building material for raising construction. Hence the suit.

2. Notice of the suit was served upon defendants.

3. They contested the suit by filing joint written statement raising preliminary objections that the plaintiff has no locus-standi to file the suit; that the site plan of the plaintiff is incorrect; that the suit is bad for non-joinder of necessary parties and that the suit has been filed with malafide intention. It was denied that the plaintiff is one of the co-owner in possession of the plot in dispute and that it bears Ahata No. 23, Ghar No. 23 as alleged. The boundaries and the site plan are incorrect. It was denied that the defendants wanted to encroach upon any particular portion of the plot of the plaintiff or his brother. The defendants further denied that the plot where they wanted to raise wall belongs to the plaintiff or his brother, but the defendants are in peaceful possession of it since long and it is owned by them. Pedigree table filed by the plaintiff is not correct.

4. From pleadings of the parties, following issues were framed:-

- “1. *Whether the plaintiff is one of the co-owners in possession of the suit land as alleged? OPP*
2. *Whether the plaintiff has no locus-standi to file this present suit? OPP*
3. *Whether the suit is bad for non-joinder of the parties as alleged? OPP*
4. *Whether the suit is malafide and false as alleged?*

5. *Relief.*

5-A *Whether the report of local Commissioner is liable to be set aside? OPD”*

5. Both the parties were granted opportunity to lead evidence.

6. After hearing arguments, learned Additional Senior Sub Judge, Gurgaon vide judgement dated 13.06.1989 decreed the suit and granted permanent injunction restraining the defendants from raising any construction over the suit property.

7. Aggrieved by the judgement dated 13.06.1989, the defendants preferred an appeal before learned District Judge, Gurgaon which was dismissed vide judgement and decree dated 03.03.1992.

8. Aggrieved by the judgement and decree so passed, the present appeal has been filed.

9. The appeal was admitted on 14.12.1992.

10. Notice of the appeal was issued to the appellants on 21.02.2023.

11. The appeal was directed to be listed for final disposal in the urgent list after notifying Mr. Harsh Aggarwal, learned counsel representing the respondents vide order dated 16.10.2023.

12. Lower Court Record was requisitioned vide order dated 16.01.2025.

13. Learned counsel for the appellants argued that both the Courts below have not properly appreciated the pleadings and evidence on record. The findings recorded by learned Additional Senior Sub Judge, Gurgaon and affirmed by learned District Judge, Gurgaon are contradictory and are based upon surmises and conjectures. The suit is bad for non-joinder of necessary parties. The plaintiff-respondent (Piare Lal) since deceased has not been able to prove his possession over the plot in dispute. So, in such circumstances, the

plaintiff-respondent is not entitled to permanent injunction as prayed for. The plaintiff has failed to prove that the defendants encroached upon any portion of the suit property during the pendency of the suit. So, the relief of mandatory injunction also cannot be granted. The pedigree table submitted by the plaintiff-respondent is proved to be wrong. So, the judgements and decrees passed by both the Courts below are liable to be set aside.

14. On the other hand, learned counsel for the respondents argued that perusal of the findings recorded by the Courts below clearly shows that there is no illegality or infirmity in the findings recorded. Both the Courts below have relied upon the report of Local Commissioner and from the report of Local Commissioner, the suit property is ownership of the plaintiff and the relief of injunction has rightly been granted to the plaintiff.

15. I have considered the submissions made by learned counsel for the respondents, but find the same to be devoid of merit.

16. 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 judgement of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others Vs Chandrika and others* (2016) 6 SCC 157 followed by the judgements in the case of *Kirodi (since deceased) through his LR Vs Ram Parkash and others* (2019) 11 SCC 317 and *Satender and others Vs Saroj and others* 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgements, no question of law is required to be framed.

17. The relevant portion of the findings recorded by learned Additional Senior Sub Judge, Gurgaon read as under:-

“The report of the local commission supports the case of the plaintiff and thus it is proved that Ghar and Ahata No. 23 are owned and possessed by the plaintiff being a co-sharer with other co-owners while the defendants are owners in possession of Ghar and Ahata No. 26. However, they have also made encroachment on Ghar and Ahata No. 23 in the Janab, Janu 3½ Gatha where there is a pucca house though this is not the case of the plaintiff regarding construction of the pucca house and in the Shumal 3½ X 1 gatta which is lying vacant and is relevant. Thus it is found that the defendants have encroached upon the properties of the plaintiff etc. as described in the report of the local commission Ex. P2 and the site plan Ex. P3 without any right or title. The Ghar and Ahata of the plaintiff No. 3 is contiguous or adjacent to the ghar and Ahata of the defendants bearing No. 26.”

18. However, when relief was granted to the plaintiff-respondent, the suit was decreed in the following terms:-

“A permanent injunction is passed against the defendants from raising any construction over the suit property shown by letters ABCD which is Ahata No. 23 Ghar No. 23 of the plaintiff etc. as the defendants have simply dug the foundation and have not raised any wall at point ‘XY’. Therefore, there is no need for issuance of mandatory injunction for demolishing construction as there is no construction over the suit property.”

19. So, both the findings of learned Additional Senior Sub Judge, Gurgaon which were later on affirmed by learned District Judge, Gurgaon are contradictory. While deciding Issue No. 1, it has been categorically recorded that the defendants have encroached upon part of the suit land and have raised pucca house over it and while granting relief, it has been recorded that no construction has been raised by the defendants over the suit land. So, the findings of both the Courts below are contradictory. It is not the case of the plaintiff-respondent that the defendants have raised construction of any pucca house during the pendency of the suit and from the evidence on record, it is proved that the defendants have encroached upon portion of the suit land and pucca construction is existing over the same. The case of the defendants in their written statement in the alternative is that they have perfected their title by way of adverse possession as they are in peaceful possession since long. So, in such circumstances, the findings recorded by both the Courts below are certainly not sustainable and are liable to be set aside.

20. So, considering the findings recorded by both the Courts below, it is proved on record that part of the suit property has been encroached upon by the defendants and they have raised construction of pucca house over it. The suit of the plaintiff-respondent does not lie for injunction. The respondents can seek possession of portion of the suit property found to be in possession of the appellants.

21. In view of the observations made hereinabove, the appeal is allowed.

22. The judgement and decree dated 13.06.1989 passed by learned Additional Senior Sub Judge, Gurgaon as well as the judgement and decree dated 03.03.1992 passed by learned District Judge, Gurgaon are accordingly set aside.

(VIRINDER AGGARWAL)
JUDGE

11th September, 2025
Amodh Sharma

Whether speaking/reasoned	√ Yes/No
Whether reportable	√ Yes/No