

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA No.1341 of 2022 (O&M)
Date of Decisoin : July 10, 2025****Satbir** **Appellant**

Vs.

Rohtash Respondent

* * * *

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. Mahipal S. Yadav, Advocate for the appellant.**DEEPAK GUPTA, J.**

Plaintiff of the case is in the present regular second appeal. Suit filed by him seeking a decree of permanent injunction against defendant – Rohtash (*respondent herein*) was decreed by the trial Court on 15.04.2014. However, in the appeal filed by defendant – Rohtash (*respondent herein*), the First Appellate Court modified the judgment of the trial Court and disposed of the appeal with certain directions to both the parties vide its judgment dated 06.09.2016. Against the said judgment of the First Appellate Court, the plaintiff of the case has approached this Court.

2. It is the contention of learned counsel for the appellant-plaintiff that the First Appellate Court was not justified in reversing the findings returned by the trial Court and that evidence on record has not been properly appreciated.

3. This Court has considered submissions of Ld. counsel for the appellant and has also carefully gone through the paper book.

4.1 The dispute is relating to a wall. The houses of both the parties are adjoining to each other with disputed wall marked by letter 'AB'

separating the same. Plaintiff's claim was that defendant had forcibly demolished the disputed wall and had started digging foundation for constructing a new wall, by claiming it to be his exclusive wall. Plaintiff had even made a complaint to the police but in vain.

4.2 The stand of the defendant was that he was the owner of the land, on which the *Kachhi* wall was constructed from A to B1. The said wall had fallen due to rain. For the safety of his house, he had constructed the new wall.

4.3 Necessary issues were framed. Evidence produced by the parties was taken on record. The trial Court returned the finding that defendant had constructed the wall from A to B1 on the *Kachhi* wall without getting the property demarcated and that said defendant had failed to prove ownership of the suit land, on which the wall was constructed. Besides, he constructed the wall during the pendency of the suit. As such the suit was decreed.

5. In appeal, in the absence of any documentary evidence regarding ownership of the wall in dispute, the First Appellate Court heavily relied upon the report of the Local commissioner, which was appointed by the Court.

6. It will be relevant to reproduce the observations made by the First Appellate Court, which reads as under:-

“15. The bone of contention between both the parties is an old *kutcha* wall which per the stand of the plaintiff was in existence at the time of filing the suit before the learned trial Court, which the defendant had demolished during the pendency of the suit. On the other hand, it is the case of the defendant that though, this *kutcha* wall was long back constructed by his father at his own expenses, however, the defendant never demolished the said wall. Per the stand of the defendant, the said *kutcha* wall was demolished due to the action of rain on its own.

16. It is further pertaining to mention here that Shri Deepak Sheoran, Advocate, Charkhi-Dadri was appointed as local commissioner in this case who had inspected the spot and has given his report Ex.P5 regarding the

existing affairs of the suit property. This way, where both the parties are claiming their respective stands, the report of local commissioner, who has been examined as PW2 in this case, has become more relevant to resolve the controversy between the parties. The local commissioner has also proved the site plan Ex.P6 which he had prepared after inspection of the spot and filed before the Court along with his report Ex.P5. As per the report Ex.P5, the local commissioner has shown the disputed site by letters 'AB'. He has stated further that point 'AB' is the newly construction in plaster wall of bricks about 4' in height. The material used in the construction of the wall was wet. Towards norther side of point 'B', there exists a mark of 18" vide kutcha wall which was visible on the ground level with both sides up to mark 'B1' and after mark 'B1', it was not visible and seems that portion of pucca wall mark 'B1' to 'A' has been raised in place of kutcha wall. He has further shown a tin-shed and two rooms towards eastern side of the pucca wall 'AB' along with existence of some building material lying there on the spot.

17. This way, the local commissioner appointed with the consent of both the parties has supported the plaintiff regarding demolition of the kutcha wall and erection of pucca wall by the defendant at its place particularly from point 'B1' to 'A'.

18. The defendant on the one hand has submitted that the kutcha wall was demolished at its own due to rain fall, however, his said contention has itself been demolished by his own documentary evidence Ex DW3/B, which is the site plan whereupon much reliance has been placed by the defendant. In the notes given beneath the site plan, it has been specifically mentioned in note No.5 that kutcha wall has been shown at dot line and it was converted into ruins and was broken. Meaning thereby, the said wall was demolished by the defendant himself and thereafter he had constructed his pucca wall from point 'A' to 'B' as shown in Ex.DW3/B. This way, where documentary evidence of the defendant itself has admitted that the kutcha wall was demolished, thus, nothing has left to be proved by the plaintiff. On the other hand, the plaintiff at the strength of his own evidence has proved about the existence of the kutcha wall which per his evidence was demolished by the defendant for the erection of his pucca wall.

19. XXX XXX XXX

20. From the other oral as well as documentary evidence, it has been proved by the plaintiff that the defendant after demolishing of the old kutcha wall existing in between both the houses of the parties, has thereafter constructed a pucca wall at its place. The report of local commissioner is further necessary to be gone through where it has been clarified by the local commissioner that the defendant has constructed pucca wall on the portion shown by him from mark 'B1' to 'A' on the place of kutcha wall. Meaning thereby, if we go through the site plan Ex.P6 prepared by local commissioner, then the defendant has constructed his pucca wall at the place of the old kutcha wall only from point 'A' to 'B1'. Meaning thereby, the rest of the portion of pucca wall i.e. from point 'B' to 'B1' shown in Ex.P6, the defendant has constructed his pucca wall leaving aside the place of kutcha wall. This way, in the larger interest of justice, instead of accepting the complete contention of the plaintiff, this Court is of the considered opinion to decree the suit of the plaintiff partly with the direction to get demolished the portion of his pucca wall from point 'A' to 'B1' as shown in Ex.P6 which is the site plan prepared by local commissioner. Further, as the defendant has already constructed pucca wall from point 'B' to 'B1', the portion shown by local commissioner in his site plan Ex.P6 and thereafter installed his tin-shed, thus, instead of issuing direction to demolish this portion from point 'B' to 'B1' of Ex.P6, it shall be in the interest of justice to issue direction to the plaintiff to construct his 4" supporting wall towards his side with the wall constructed by the defendant from point 'B' to 'B1' and thereafter both the parties will share this portion jointly for their future pucca construction in equal portion. The defendant is further directed to demolish the disputed wall from portion 'A' to 'B1' within a period of two months from today."

6. It is clear from the aforesaid observations that Local commissioner had been appointed with the consent of both the parties. He inspected the site and filed report Ex.P5 and site plan Ex.P6, wherein he identified the demolished kutcha wall and a newly constructed pucca wall (marked 'A' to 'B1') in its place. The Local Commissioner confirmed that from 'A' to

‘B1’, a pucca wall had been constructed at the same location as the old kutcha wall. From ‘B1’ to ‘B’, the pucca wall was not on the site of the old wall, but adjacent to it. The defendant’s own document Ex.DW3/B contradicted his defense by acknowledging that the kutcha wall was broken and turned to ruins due to rainfall.

7. There is nothing on file to suggest that any of the parties had filed any objections against the report of the Local Commissioner. In these facts and circumstances, the First Appellate Court was justified in coming to the conclusion by relying upon the report of the Local Commissioner that the defendant had constructed the pucca wall at the place of kutcha wall only from point A to B1 and that rest of the portion of the pucca wall, i.e. from point B to B1 as shown in the site plan (Ex.P6) prepared by the Local Commissioner, the pucca wall was constructed by leaving aside the place of kachha wall.

8. Thus, a balanced relief was granted by the appellate court —demolition, where encroachment occurred and shared use, where encroachment was not proved.

9. This Court does not find any ground to interfere in the aforesaid findings of facts as recorded by the First Appellate Court, based upon the evidence on record, particularly the report of the Local Commissioner, who was appointed with the consent of the both parties and against which report, no objections were filed by any of the parties. As such, holding the present appeal to be devoid of merit, the same is hereby dismissed, .

July 10, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

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