

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.781 of 2025 (O&M)

Reserved on: 02.04.2025

Date of Order:21.04.2025

Jeet Ram (since deceased) through LRs and others

.Appellants

Versus

Smt. Santra Devi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kunal Dawar, Advocate
for the appellants

Mr. V.K.Jindal, Sr. Advocate, with
Mr. Saurav Dalal, Advocate
Mr. Vijayveer Singh, Advocate
for the respondent.

ANIL KSHETARPAL, JUDGE (Oral)

C.M.No.3478-C-2025

1. The plaintiff prays for permission to amend the plaint in order to seek relief of possession which is opposed by the defendants.
2. This application will be considered with RSA No.781 of 2025.

MAIN

3. With the consent of the learned counsel representing the parties, taken on Board for final disposal.
4. Defendant assails the correctness of the First Appellate Court's judgment which in turn has reversed that of the trial court.
5. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
6. The plaintiff claims that after having purchased 1 kanal 2 marlas land comprised in Rect. No.22, Killa No.21/4, situated in residential

area of village Sukhrani, she has constructed some portion over the said land. The plaintiff's husband has also constructed some portion in land comprised in Rect. No.31, Killa 1/1. The defendants have also made certain constructions in Rect. No.31, Killa No.1/1, though, they have no right, title or interest in killa no.21/4 which was purchased by the plaintiff. However, now they have started raising fresh construction by constructing a basement while encroaching upon some portion of land comprised in killa no.21/4.

7. The defendants contested the suit by claiming that they have nothing to do with the land comprised in killa no.21/4.

8. During the pendency of the suit, the property was repeatedly demarcated and it was found that the defendants have encroached upon the plaintiff's property comprised in khasra no.21/1.

9. In the first round, the suit filed by the plaintiff was dismissed on 21.09.2014, against which the first appeal was allowed on 18.02.2015. However, two regular second appeals were disposed of on 18.09.2017, with the following order:-

“During the course of the arguments, it has come to the notice of this Court that the objections filed to the report of the Local Commissioner dated 15.04.2014 Mark E, have not been decided by the Trial Court.

The dispute in the present case is whether the defendants-appellants have encroached upon some portion of the land owned by the respondents or not. The controversy can only be decided on the basis of the demarcation report.

Since, the objections to the report of the Local Commissioner have not been considered by the Court while deciding the suit, therefore, this courts is of the opinion that the case is required to be remanded back for

consideration on the aforesaid objections.

The entire dispute can only be resolved through a proper demarcation and now with the advent of the technology, new machine i.e. Total Station Machine(theodolite) is available, the court would appoint the competent revenue official to carry out the demarcation with the aforesaid machine and submit its report. Since, the suit has been pending for quite sometime, the trial court would decide the suit as early as possible within a period of six months.

All the objections filed by the parties or to be filed by the parties would be considered by the Trial Court and the Trial court would re-decide the case on merit, afresh.”

10. Ultimately, with the total station machine (theodolite) the demarcation was carried out by the revenue authorities. In the demarcation report, it was reported that Dilbagh Singh, Prem Singh, Devender Kumar and Naresh Kumar, defendants no.2 to 5, have encroached upon 55.84 square yards, whereas Sanjay son of Jeet Ram has encroached upon 67.79 square yards over the land the comprised in killa no.21/4. Thus, the total encroachment of 123 square yards out of the total land comprised in killa no.21/4 was found.

11. The trial court, however, dismissed the suit on the ground that the plaintiff has not sought relief of possession and simpliciter suit for injunction is not maintainable. Defendants did not file appeal, whereas the plaintiff filed first appeal which has been accepted by the First Appellate Court on the ground that under Order VII Rule 7 CPC, moulding of relief is permissible. Thus, the First Appellate Court passed decree for possession.

12. During the pendency of the appeal, as already noticed, the

plaintiff filed an application for permission to amend the plaint so as to pray for decree for possession after depositing court fee. The defendants opposed the same.

13. After having heard the learned counsel representing the parties, this court is of the considered view that the plaintiff is only seeking to amend the prayer clause while making assertions to this effect in para 5(a) and prayer clause. In the interest of justice, such amendment is required to be allowed to advance the cause of justice.

14. It is evident that time and again the property has been demarcated and finally in the year 2018, the demarcation has taken place with the help of Total Station Machine(Theodolite).

15. The learned counsel representing the appellant though made sincere attempt, however, failed to point out any substantive error by the First Appellate Court. In fact, the appellants had based their appeal on the ground that the plaintiff has not sought relief of possession which has now been sought.

16. Hence, the appeal is dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)
JUDGE**

**21st April, 2025
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**Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No**