

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****232****RSA-4538-2017 (O&M)****Date of decision: 27.04.2026****Ranjit Singh and another****...Appellant(s)****Vs.****Nagor Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Deepak Aggarwal, Advocate
for the appellant.

Mr. Inderjeet Sharma, Advocate
for the respondent.

NIDHI GUPTA, J.

Defendants are in Second Appeal against the judgment of reversal whereby suit filed by the plaintiff/respondent for possession although dismissed by the learned Trial Court, has been decreed in first appeal by the learned First Appellate Court.

2. Brief facts of the case are that the plaintiff had filed the present suit for possession claiming to be owner in possession of land measuring 51 Kanals in Khewat No. 181/356. It was alleged in the plaint that in January 2009, defendants had taken forcible possession of the said suit land of the plaintiff. Accordingly, plaintiff had moved an application dated 11.05.2012 to the Tehsildar Bathinda for demarcation. Pursuant thereto, on 07.12.2012, demarcation was conducted by Halka Kanungo whereby it was found that defendants are in illegal possession of suit land and also in illegal possession of gair mumkin pahi in Khasra No. 278. Despite



requests, defendants had refused to vacate the suit land. As such, plaintiff was constrained to file the present suit on 26.03.2013.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Junior Division), Bathinda had dismissed suit of the plaintiff vide judgment and decree dated 23.12.2015. However, the Civil Appeal filed by the plaintiff has been accepted by the learned Additional District Judge, Bathinda vide impugned judgment and decree dated 17.02.2017 as follows:

“14. As a natural corollary to the above discussion and findings, the appeal in hand is, hereby, accepted, by way of setting aside of the impugned judgment and decree and consequent decretal of the suit, filed by the plaintiff. Decree sheet be prepared accordingly.”

Hence, present second appeal by the defendants.

4. It is *inter alia* submitted by learned counsel for the appellants/defendants that plaintiff had filed the present suit seeking possession on the basis of Report of Demarcation. It is submitted that the said demarcation was not conducted in accordance with the Rules as 3 pucca points were not taken. It is submitted that although learned First Appellate Court has acknowledged this defect in the Demarcation Report, yet, has allowed the Appeal of the plaintiff and decreed suit of the plaintiff by setting aside the judgment and decree of the learned Trial Court.

5. It is contended that reasoning of learned First Appellate Court is untenable and cannot be sustained. Impugned judgment is based on conjectures and surmises as, while passing the impugned judgement and



decree, the lower Appellate Court did not consider the fact that the Revenue Officer has failed to mention in the Demarcation Report Ex. P-2 taking 3 points on different sides of the place in dispute, or even detail of measurement. The fact regarding taking of measurement etc. has been pointed out by the Ld. Civil Judge in his judgement but by ignoring all the said facts, the impugned judgement and decree has been passed.

6. It is accordingly prayed that the present appeal be accepted and the Judgment and decree dated 17.02.2017 passed by the Ld. Additional District Judge may kindly be set aside.

7. *Per contra*, learned counsel for the respondent/plaintiff is prima facie unable to dispute the above said facts. However, Learned counsel for the respondent submits that Demarcation Report suffers from no error. It is submitted that 3 pucca points were duly taken by Kanungo while conducting demarcation. He accordingly prays for dismissal of the present Appeal.

8. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I have given my thoughtful consideration to the entirety of the above noted facts of the case. I find merit in the submissions advanced on behalf of the appellant.

9. Demarcation Report Ex.P2 is the only basis on which the first Appellate Court has held that appellant was in encroachment of the suit property, and therefore, plaintiff has been granted relief. However, there are glaring discrepancies in the Demarcation Report Ex.P2 relied upon by the plaintiff to prove the alleged encroachment by the defendants. To the



effect that Balwinder Singh Kannungo while appearing as PW2 has admitted in his cross-examination that he had started demarcation with 3 pucca points; *but* in his Report Ex.P-2, only one pucca point is mentioned which was fixed as pucca thadda. Therefore, it is nowhere clear that 3 pucca points were taken by Kanungo while conducting demarcation; as was mandatorily required as per relevant High Court Rules and Regulations and also as per law.

10. Furthermore, Demarcation Report Ex.P2 is not reliable also because a perusal thereof shows that it is mentioned by Kanungo that all persons present there had signed the Demarcation Report. However, in his cross-examination PW2 Kanungo has admitted that defendant was present at the time of demarcation, but he had not signed the Report. Thus, it is not proved that demarcation was conducted in the presence of the appellant.

11. Last but not the least, PW3/ plaintiff-Nagor Singh, has stated in para 3 of his affidavit that defendant was found in illegal possession of gair mumukin pahi in Khasra No. 278 (0-8). However, this fact was controverted by PW2 has further admitted in his cross-examination that he had not conducted any Report regarding possession of pahi. Thus, there are glaring loopholes in the case set up by the plaintiff.

12. The relevant findings of the First Appellate Court are contained in paras 12 and 13 of the judgment dated 17.02.2017, which read as under:-

“12. For proper appraisal of the factual and legal matrix of the case, it is the duty of the court to adopt a pragmatic and practical approach, rather than adopting a pedantic or hyper-technical approach. Instead of going into technicalities, it is the



duty of the court to see as to whether demarcation of the disputed land was, in fact, properly conducted on the spot and that what was the actual outcome. In the instant case, it is the plea of the appellant/plaintiff that the defendant Ranjit Singh and Hardev Singh have illegally encroached upon his land, comprised in khasra No. 3//11/1 (0-4), 20/2 (0-6), 21/1 (0-6) and Gair Mumkin Pahi bearing Khasra No. 278 (0-8), which has been reiterated by him in his testimony as PW3 and has been corroborated by PW4 Swaran Singh. In order to ascertain as to which piece and How much land was encroached by the defendants, the plaintiff had got his land demarcated by PW2 Balwinder Singh Kanungo, who in his examination-in-chief has clearly stated that he had checked the whole of the relevant record, the Zareeb and only then, had demarcated the land from three permanent stones (Pakka Thadda). It is not of much relevance that the Kanungo had not mentioned all the three Pakka Thaddas in Naksha Tawafat Ex.P3) but still, he has stated that one Pakka Thadda which was on the Eastern side, has been mentioned by him, in his demarcation report. This clearly shows that demarcation on the spot was conducted after finding out and ascertaining of at least one Pakka Thadda as mentioned in the cross examination of PW2 Balwinder Singh. The cross examination of Balwinder Singh Kanungo does not show that he had not ascertained all the three Pakka Thaddas. It was the job of the defendant to show that the demarcation was conducted without ascertaining the disputed land on the spot. The testimony of Balwinder Singh Kanungo, when read and appreciated as a whole, then it shows that all the three Pakka Thaddas were/ascertained by him and only then demarcation was conducted, after checking of the whole of the relevant revenue record. A perusal of the report Ex. P2 in conjunction with Naksha Tawafat Ex. P3 has shown that the



Kanungo had conducted the demarcation of the disputed land, not only properly, but too effectively, by way of mentioning the dimensions of each and every khasra number and the Pahi, as has been shown in the said Naksha (site plan). Then, the demarcation report has clearly shown that as to how much land from each and every Khasra number has been encroached by the defendants. After showing this, in his Naksha Ex. P3, the Kanungo has calculated the area of land, encroached upon, in a specific khasra number. The Kanungo had mentioned that 0-4 marlas have been encroached in khasra No. 11/1, 0-4 marla in khasra No. 20/2, 0-6 marla in khasra No. 21/1, totaling 0-6 marlas of agricultural land and 0-8 marlas in khasra No. 278, which is Gair Mumkin Pahi. All these facts have been clearly mentioned in the demarcation report, making it too clear that the demarcation was, in real sense, conducted on the spot by the Kanungo. The demarcation report has also shown that due notice of conducting of the demarcation was duly given to the defendants by the Kanungo through Jagsir Singh chowkidar, but, as per his report earlier the defendants had come present, but, at the time of putting their signatures, they left the spot. This conduct of the respondents/defendants cannot make the demarcation report to be illegal, especially when this demarcation report has not been challenged by the defendants/respondents at any administrative Forum or in the Civil Court. Although, the defendants have placed reliance upon one demarcation report dated 8.1.2010 Ex.DW2 on record, but, the said demarcation report was conducted in the year 2010 and the demarcation report Ex.P2 was conducted in the year 2012 and as such, the latest demarcation report is supposed to be taken into consideration, as it is quite possible that the defendants would not have encroached upon the land in the year 2010, but, had encroached upon the land of the



plaintiff, after 2010. The defendant Ranjit Singh in the course of his cross examination has indirectly admitted that he was given due notice of the date and time of conducting of demarcation by chowkidar Jagsir Singh, but, had not challenged the credibility of the demarcation report at any forum.

13. In view of my above discussion, I have reached to the conclusion that the respondents, defendants are in illegal possession of 16 marlas of agricultural land belonging to the plaintiff and 8 marlas of land, falling in Gair Mumkin Pahi and as such, the suit filed by the plaintiff is maintainable and the plaintiff is entitled to possession of the said land encroached by the defendants. For these very reasons, the findings of the learned lower court on issue no. 1, are ordered to be set aside, by way of adjudicating the same in favour of the plaintiff.”

(Emphasis added)

13. A bare reading of the above shows that there are inherent and palpable flaws in the aforesaid reasoning of the learned First Appellate Court. It is my clear view that the impugned judgment is based entirely on conjectures and surmises; and uncalled for inferences. Suit of the plaintiff could most definitely not have been decreed in view of the admitted facts that: a) it is not established on record that 3 pucca points had been taken while conducting demarcation, and were accordingly not mentioned in the report Ex.P2; and b) therefore, 3 pucca points are not mentioned in Naksha Tawafat Ex.P3 as well; and c) that signatures of the appellant are not borne on the Demarcation Report; and d) therefore, presence of defendant at time of demarcation is not established; and e) most importantly, although Kanungo PW2 has admitted in his cross-examination that he had not



conducted any Report regarding possession of pahi; yet, first Appellate Court has held that the appellant was in encroachment even on Pahi.

14. The first Appellate Court has also failed to deal with the cogent findings returned by the Trial Court. The relevant findings of Id. Civil Judge (Junior Division), Bathinda are contained in paras 10, 11 and 12 of the judgment dated 23.12.2015, which read as under: -

“10. I have heard Id. counsel for the parties and have gone through the file carefully. In the present case matter in controversy is that whether the defendant is in illegal possession of the suit land. Evidence which is led by the plaintiff in this regard is demarcation report Ex.P2 and Ex.P1 is the application moved by the plaintiff for conducting demarcation. Ex.P3 is scallion map prepared by the revenue official. To prove this demarcation sole witness examined by the plaintiff is PW 2 Balwinder Singh Kanungo, who in his examination in chief has proved the report of demarcation conducted by him. However in his cross examination he stated that he started the demarcation from three permanent points but he further admitted that in his report there is (only one point mentioned which was fixed as pakka thada, He further stated in his cross examination that he has not conducted any report regarding possession of pahi, but this fact is contradicted by PW 3 Nagor Singh, who in his affidavit in para no.3 has stated that defendant was found in illegal possession of Gair mumkin pahi in khasra no.278(0-8).

11. There are specific directions to the revenue officials that before conducting demarcation field kanungo has to explain in detail that how he made measurement. He should submit the copy of field map of the Village showing the fields with their dimensions and he must explain that from where he took the



measurements. He has to further take three points on different sides of the place in dispute as near as he can and if possible not more than 200 karams. These points are only taken with the consent of the parties and admitted to be undisturbed. He further when taking measurements should explain to the parties that what he is doing and should enquire from them whether they wish anything further to do done and at the end he should record statements of parties. Further he is bound to record objections raised by any person and reason of such objection.

12. From the perusal of the demarcation report Ex.P2, it reveals that it is mentioned by kanungo that all the persons present there signed the demarcation report, but in his examination in the Court he admitted that defendant Ranjit Singh was present at the time of demarcation but he did not sign the report. However, revenue official did not mention this fact in the demarcation report ExP2. Whereas he was duty bound to record this fact in his report specifically and also to record the reason for non signing of Ranjit Singh. But no such fact is mentioned in the report Ex.P2. In the absence of both these facts demarcation report is not fully reliable and when the demarcation report, which is the only base of the relief claimed by the plaintiff is not reliable, then in the considered opinion of this Court, plaintiff is not entitled to the relief of possession as prayed for. Accordingly issue no.1 is decided against the plaintiff and in favour of the defendant.”

15. Ld. Counsel for the plaintiff is unable to dispute or controvert the above said facts and findings of the learned Trial court.

16. In view of the discussion above, the present Regular Second Appeal is hereby **allowed**; and the judgment and decree dated 17.02.2017



passed by learned First Appellate Court is accordingly set aside. However, with the consent of Id. Counsel for both the parties, this Court deems it fit to remand the matter back to the learned District Court for conducting demarcation again, in accordance with law.

17. Pending applications, if any, stand disposed of.

27.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No