

**IN THE COURT OF SH. ABHITOSH PRATAP SINGH RATHORE
DISTRICT JUDGE-05, SOUTH WEST DISTRICT,
DWARKA COURTS, NEW DELHI.**

**RCA DJ 44/2025
DLSW01-002828-2025**

IN THE MATTER OF:

Dharambir Singh
S/o Sh. Bharat Singh
R/o House No. 197,
V.P.O, Bamnoli, New Delhi- 77

...Appellant

Vs.

1. Jagdish S/o Late Ran Singh
V.P.O Bamnoli, Near HDFC Bank, New Delhi- 77

2. Balwan Singh S/o Late Sh. Dalip Singh
V.P.O Bamnoli, Near HDFC Bank, New Delhi- 77

3. Daya Singh S/o Late Sh. Dalip Singh
V.P.O Bamnoli, Near HDFC Bank, New Delhi- 77

...Respondents

Date of filing	:	02.04.2025
Date of conclusion of Final Arguments	:	08.05.2026
Date of pronouncement of Judgment	:	25.05.2026

JUDGMENT

1. Present appeal has been filed under Section 96 read with Order XLI Rule 11 and Section 151 CPC on behalf of the appellant/plaintiff against the

impugned judgment dated 29.11.2024 in CS No.822/2019 passed by the Court of Additional Senior Civil Judge, South West District, Dwarka Courts, New Delhi.

2. By way of the present appeal, the appellant impugns the judgment dated 29.11.2024 passed by the Court of Additional Senior Civil Judge dismissing the suit of the appellant/plaintiff. As per the appeal, the plaintiff had filed a suit for permanent & mandatory injunction on the ground that the plaintiff is the owner and in possession of the house and the defendant is encroaching upon the walls of the plaintiff's property. However, the Ld. Trial Court dismissed the same, holding that the plaintiff had failed to discharge the onus upon him and had failed to substantiate the averments made in the plaint. Plaintiff also failed to bring on record any ownership document showing that the ownership of the particular area of land is in favour of the plaintiff. It is stated that the Ld Trial Court failed to consider that respondent No.1, in his cross-examination, admitted that the wall is a disputed wall and that its width is 14 inches. It has also been filed on the ground that the Ld Trial Court failed to consider that respondent No.2, in his cross-examination at page No. 2 dated 16.07.2024 admitted that he did not remember whether he had specified the length of his portion of the wall and that he was unable to clarify the same even after going through the site plan.

It is stated that the judgment is wrong, perverse, and contrary to the facts on record and that there was no pleading or evidence led by the defendants to show that the wall in question was a common wall between the parties.

3. Reply to the appeal was filed on behalf of the respondent. It was submitted that the appeal is barred by limitation and that the contents of the appeal are vague and are merely a repetition of the averments made in the main suit filed by the appellant, which are also false, as the property constructed and owned by the respondent is much older than the property owned by the appellant.

It is further stated that during the trial of the main suit, the appellant himself had taken contradictory stands in the pleadings as well as in his cross-examination. It is prayed that the appeal be dismissed.

4. Perusal of the record shows that the Ld. Trial Court had framed four issues, excluding the relief clause, out of which the onus to prove the first two issues, with respect to non-joinder of necessary parties and whether the plaintiff had approached the Court with clean hands, was upon the defendant.

The remaining two issues were framed in terms of the prayers in the plaint seeking relief of permanent & mandatory injunction. Onus to prove both these issues was on the plaintiff. Both these issues were taken up together by the Ld. Trial Court. Ld. Trial Court, in its findings, observed as follows:

“In order to discharge his onus the plaintiff got himself examined as PW-1. The case of plaintiff is that he is owner and in possession of specific dimension of land measured to the extent of inches. The plaintiff failed to bring on record any ownership document thereby conferring ownership of a particular area of land in favour of plaintiff. Plaintiff failed to bring on record any ownership document or so called partition or the construction of boundary wall i.e. the suit property of any particular dimension in his own area by his father at any point of time. The plaintiff also failed to substantiate the averment of hollow almirah in his own side of wall ABCDEFGH having width of 14 inches and length of 46 feet and 7 inches. DW-1 stated in cross examination that the portion of wall from point A to B belongs to him is having the height of about 18-

20 feet and width of wall is 14 inches upto 18 feet. DW-1 also stated in cross examination that the portion of wall from B to C is having the height of about 20-22 feet which belonged to Balwan Singh and width of wall is about 9 inches right from base to its top height. DW-1 also stated in cross examination that the portion of wall from C to B is owned by Sh Daya Singh and having height of about 30-32 feet and width of wall is about 9 inches from base to its top whereas PW-1 has specifically stated in his affidavit Ex. PW-1/A that the boundary wall of plot was constructed in the year 1965 by his father where a wall of 18 inches with bricks constructed by his father and the wall of western side of plot was constructed/erected upto height of 12 feet i.e. to say the western side wall has been shown as ABCDEFGH in the site plan Ex PW-1/B, which is admitted part of plaintiff, and shown Red in the site plan. The entire wall is shown to be of 18 inches in width in Red colour but the width of Wall is in contravention to the photographs Ex. PW-1/C (himself relied upon by plaintiff). In Ex. PW-1/C the width of fresh wall is 9 inches which can be seen from linear and vertical arrangement of bricks which have their length of 9 inches, breadth of 4 inches and height/thickness of CS No. 822/2019 Page no. 9 of 10 2.5 inches. Any kind of recurring arrangement of bricks cannot raise the wall of the width more than to length of the bricks which is obviously 9 inches. The photographs relied upon by plaintiff itself shows the raising of 9 inches wall from bottom to top and this fortifies the averment made by DW-1 in his cross examination and in addition to same, it shutters the testimony of PW-1/plaintiff that the wall at western side of plot i.e. A-H is 14 inches in width running upto 46 feet and 7 inches. The photograph Ex. PW-1/C supports the testimony of PW-1 and it gives serious dent to averment made in the plaint and deposition made in affidavit Ex. PW-1/A filed by plaintiff, so on preponderance of probability the plaintiff has failed to discharge his onus to prove issue no. (iii) and (iv) and hence, issue no. (iii) and (iv) are decided against plaintiff and in favour of defendant.

In view of findings in issue no. (iii) and (iv), the suit filed by plaintiff is dismissed”.

5. The Ld Trial Court has stated that the plaintiff, even on the touchstone of preponderance of probabilities, has failed to prove his case.

6. It is a settled position of law that the standard of proof in criminal matters and civil matters is different. Although the Indian Evidence Act, 1872, or the Bharatiya Sakshya Adhiniyam, 2023 does not expressly discriminate between civil matters and criminal matters. So far as the standard of proof is concerned, the settled rule of convention is that the standard of proof in criminal matters is distinctly higher than in civil matters.

In civil matters, the Court has to examine the preponderance of probabilities, i.e. whether the suit, as pleaded and proved by the plaintiff, appears probable. This is distinct from the standard of proof required for conviction in criminal matters, where the material against the accused must point towards his culpability beyond reasonable doubt.

In this regard, it would be pertinent to mention the observations of the Hon'ble Supreme Court of India in ***“Dr. N.G. Dastane vs Mrs. S. Dastane, AIR1975 SC 1534”*** regarding the principle of preponderance of probabilities:

“24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the

two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note : "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. in Wright v. Wright (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear" Blyth v. Blyth [1966] 1 A.E.R. 534 at 536. But whether the issue is one of cruelty or of a loan on a promissory note, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.

25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature”.

7. The plaintiff, in his evidence, has relied upon the site plan, photographs of the suit property, Aadhaar Card, and electricity bill. In his evidence, several peripheral questions pertaining to the dispute between the

plaintiff and the defendant were asked. There are many contradictions in the testimony of the plaintiff vis-à-vis his pleaded case. However, this Court is of the considered opinion that the same is not relevant for deciding the matter in controversy. Even if there were material inconsistencies with respect to several peripheral facts surrounding the main dispute, the suit of the plaintiff could still have been decreed, had the material on the particular fact in issue been cogent and conclusive.

The plaintiff, in order to show that there was encroachment, was required to establish,

- (A) the exact dimensions of the property, with cogent documentary support,
- (B) source of ownership of the property with those dimensions,
- (C) the encroachment by the defendant which resulted in alteration of the dimensions and,
- (D) conclusive evidence of the encroachment.

None of the four essentials required to succeed in this case was shown by the plaintiff. The photographs, as presented by the plaintiff, do not show anything conclusive. They merely show a wall of uniform length and breadth. At some places, it appears to have been repaired, while at some places, it appears to be quite old. However, it appears to be a continuous line. There is no part protruding or caving in so as to give an impression of encroachment.

The plaintiff himself has given contradictory statements regarding his intention to construct a tin shed. At one place, he has stated that it is wrong to suggest that he had ever tried to construct a tin shed adjoining and trespassing upon the property of the defendant. On the other hand, he has stated, “I have

raised a tin shed room in the backside left side corner of the suit property.” Plaintiff’s admission regarding the tin shed, although it does not tilt the scale in favour of the defendant, does indicate a general state of confusion regarding the actual dimensions of the property. Whatever evidence has been produced by the plaintiff, is insufficient to arrive at a finding regarding encroachment by the defendant. The observation of the Ld. Trial Court that the plaintiff has failed to prove his case even on the touchstone of preponderance of probabilities is correct to that extent.

The documents produced by the plaintiff, such as Aadhaar Card and site plan, are self-serving documents. Even the site plan has been objected to by the defendant as being inaccurate. However, no sincere efforts were made by the plaintiff to produce additional evidence apart from the site plan to establish the exact dimensions of the property and the alleged encroachment by the defendant.

8. This court is of the considered opinion that whatever material was produced by the plaintiff before the Ld Trial Court was insufficient to draw any inference with respect to the alleged encroachment by the defendant. This court finds no illegality and infirmity in the impugned judgment.

The appeal is hereby dismissed.

Appeal file be consigned to Record Room. Trial Court Record be sent back.

**Typed to the dictation directly,
corrected and pronounced in the
open Court on 25.05.2026**

(Abhitosh Pratap Singh Rathore)
DJ-05 (SW)/Dwarka Courts
New Delhi: 25.05.2026