

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

RSA No. 411 of 2016
Reserved on : 7.5.2026
Decided on: 18.5.2026

Avtar Singh

...Appellant

Versus

Kamal Dev

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

For the Appellant: Mr. R.K. Sharma, Senior
Advocate, assisted by Ms.
Shivani Thakur, Advocate.

For the Respondent : Mr. K.S. Thakur, Senior
Advocate, assisted by Mr.
Harjeet Singh, Advocate.

Virender Singh, Judge

The appellant has preferred the present Regular Second Appeal, under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 17.6.2016, passed by the Court of learned District Judge, Hamirpur, H.P. (hereinafter referred to as 'the First Appellate Court'), in Civil

Appeal No. 14 of 2014, titled as, 'Avtar Singh versus Kamal Dev'.

2. Vide judgment and decree, dated 17.6.2016, the learned First Appellate Court has dismissed the appeal, preferred by the defendant, against the judgment and decree, dated 4.12.2013, passed by the Court of learned Civil Judge (Senior Division), Court No. 1, Hamirpur, H.P. (hereinafter referred to as 'the learned trial Court'), in Civil Suit No. 147 of 2008, titled as, 'Kamal Dev versus Avtar Singh', whereby, the learned trial Court has decreed the above titled suit.

5. For the sake of convenience, the parties, to the present lis, are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

6. Brief facts, leading to filing the present appeal, before this Court, as borne out from the record, may be summed up, as under:

The plaintiffs have sought relief of permanent prohibitory injunction against the defendant, his agents, servants and family members from interfering, in any manner, whatsoever, raising construction, changing the nature of the land, comprising khata No. 333, Khatauni No. 348, Khasra No. 1490, measuring 1 kanal, 13 marlas (hereinafter referred to as 'the suit land'), as per jamabandi for the year 2003-04, situated in Tika Channed Tappa Ugilata, Tehsil and District Hamirpur, H.P. It has also been prayed that in case, during the pendency of the suit, defendant succeeded in raising construction over the suit land, then, the suit may be decreed in his favour by way of demolition.

6.1 According to the plaintiff, he is co-owner in possession over the suit land, whereas, the defendant is stranger qua the suit land. The defendant, being a head strong and quarrelsome person, had started interfering over the suit land, by

way of digging, collecting construction material, changing the nature of the suit land and threatening to raise construction over the suit land, for which, he has got no right, title or interest. The plaintiff requested the defendant not to do so, but, the defendant did not pay any heed.

6.2 Cause of action to file the suit is stated to have been accrued to the plaintiff on 20.9.2008, when, the defendant started digging the suit land for the purpose of raising construction, collecting construction material and changing the nature of the suit land.

6.3 When, put to notice, the suit has been contested by the defendant, by taking preliminary objections, that plaintiff has not approached the Court with clean hands and suppressed the material facts from the Court. According to the defendant, he has started raising construction over his land bearing khasra No. 1489/4, with the help of government aid, which was given to him, under the

IRDP scheme. The plaintiff has no cause of action to file the suit.

6.4 On merit, the suit has been contested, on the ground, that the defendant has no concern with the suit land and question of construction does not arise at all. According to him, he has raised construction in his own land, which was owned by his father and he has raised construction with the financial help, given to him, by the State. Thus, a prayer has been made to dismiss the application.

7. From the pleadings of the parties, following issues were framed by the learned trial Court, vide order dated 8.2.2010:

- 1. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as prayed for? OPP*
- 2. Whether the plaintiff is entitled to the decree of possession by way of demolition, as prayed for? OPP*
- 3. Whether the plaintiff has no cause of action in the present suit, as alleged?OPD*
- 4. Relief.*

8. Thereafter, parties to the lis were directed to adduce evidence. After closure of evidence, upon

hearing the learned counsel for the parties, the learned trial Court has decreed the suit, vide judgment and decree, dated 4.12.2013. The said judgment and decree has unsuccessfully been assailed by the defendant, before the learned First Appellate Court.

11. Now, the appellant-defendant is before this Court by way of present appeal. The findings of both the Courts below have been assailed on the ground that the learned trial Court, in the present case, has appointed the Local Commissioner, who has submitted his report on 15.10.2011, in which, it has been admitted that the defendant, while raising construction, has encroached upon khasra No. 1490. The learned trial Court has wrongly relied upon demarcation report, Ext. PW2/D. The impugned judgments and decrees are stated to be against law and facts.

12. The findings of both the Courts below have further been assailed on the ground that both the

Courts below have not only created the evidence for the plaintiff, rather, decided the case only on the strength of it. The report of the Local Commissioner is stated to have wrongly been relied upon. It has further been pleaded that the Local Commissioner has not summoned the defendant.

13. Contrary to it, the presence of father of the defendant has been shown as his power of attorney, whereas, there is no explanation qua the fact as to whether his father has shown the power of attorney to the Local Commissioner, on the spot, or not. The addition in the report of the Local Commissioner is also stated to be fatal for the case of the plaintiff.

14. In nut-shell, the findings of both the Courts below have been assailed on the ground that the learned trial Court has wrongly decreed the suit, on the basis of report of the Local Commissioner, which, according to learned Senior Counsel, appearing for the appellant/defendant, is not as per the Rules.

15. The findings of both the Courts below have further been assailed on the ground that the plaintiff has also admitted the fact that Khasra No. 1489 does not touch the land of the defendant and it is at a distance of 20-25 meters. Evidence of PW-3 is stated to have wrongly been relied upon, as according to the defendant, she is an interested witness.

16. Lastly, the findings of both the Courts below have been assailed on the ground that both the Courts below have failed to consider the earlier demarcation report, dated 7.11.1987, conducted by Sh. L.R.Verma, Tehsildar, relating to Khasra Nos. 1489 & 1490 in case No. 356/86, which was Ext. DW4/A, in Civil Suit No. 179/86, titled as, 'Chattru Ram vs. Bohra Ram'.

17. As such, a prayer has been made by Mr. R.K. Sharma, Senior Advocate, assisted by Ms. Shivani Thakur, Advocate to allow the appeal by setting aside the judgments and decrees, passed by both the

Courts below and a prayer has been made to dismiss the suit of the plaintiff.

15. Per contra, Mr. K.S. Thakur, learned Senior Advocate, assisted by Mr. Harjit Singh, Advocate, has supported the judgments and decrees, passed by both the Courts below. As such, a prayer has been made to dismiss the present appeal.

16. The appeal has been admitted by this Court on 23.5.2018, on the following substantial question of law:

“Whether the learned Court below has failed to appreciate the demarcation report and other documents brought on record correctly and to its true perspective, and the findings recorded by both the learned Courts below are without appreciating the pleading and the evidence correctly, thus the same are perverse.”

17. It is the specific case of plaintiff Kamal Dev that he is co-owner and in possession of the suit land. According to him, defendant is absolutely stranger qua the suit land. As per the stand taken in paras 1 and 2 of the written statement, the defendant has admitted that he has no concern whatsoever with the suit land, as

such, according to him, question of construction does not arise at all.

18. In para-2 of the written statement, the defendant has also admitted that he has no right, title or interest, over the suit land, and he has started raising construction over his own land. In para-3 of the written statement, he has further explained his position by pleading that construction was being raised over khasra No. 1489/4.

19. Perusal of the record shows that plaintiff has moved an application under Order 26 Rule 9 CPC for appointment of Local Commissioner to demarcate the suit land, as, according to the said application, the defendant, despite stay order, has raised construction over the suit land. In pursuance of directions, issued by the learned trial Court, on 8.2.2011, the application for appointment of Local Commissioner was allowed, and the Local Commissioner Dhian Singh, who has been examined as PW-2, has submitted his report.

20. According to Local Commissioner, Dhian Singh, he has demarcated the suit land on 15.10.2011 after

giving information, vide Ext. PW2/B. Thereafter, the statements of the parties were recorded qua fixing the pakka points, vide Ext. PW2/C. Father of the defendant was present on the spot, who has also accepted the pakka points as correct. He has proved his report as Ext. PW2/D. Lastly, he has stated that in the demarcation, two marlas of land was found, under the unauthorized possession of the defendant. The said possession is by way of construction.

21. In the cross-examination, he has admitted that defendant Avtar Singh was not present there on the spot. A portion of the house of the defendant was found over the suit land. On the spot, neither any action has been taken over the objections raised by Bohra Ram, nor he had produced any demarcation report. His report is on the record as Ext. PW2/D.

22. The stand of the defendant that he was not present there, is not liable to be accepted, as information regarding demarcation, which was given by the Local Commissioner, was received by Bohra Ram, who is not stranger, but father of defendant Avtar Singh. When, the

pakka points were fixed by the Local Commissioner on the spot vide Ext. PW2/C, Bohra Ram has not only signed the document, but, introduced himself to be the GPA of defendant Avtar Singh. When, father of defendant Avtar Singh introduced himself to be the GPA of defendant Avtar Singh, then, there was no occasion for the Local Commissioner to doubt his status as GPA of the defendant. Had he not been the GPA of the defendant, then, there was no occasion for him to receive the notice of the demarcation, vide Ext. PW2/B.

23. Defendant Avtar Singh has filed the objections to the report of the Local Commissioner. In the said report, he has taken the plea that he has not given any power of attorney to any of his family members, whereas, in the report of Local Commissioner, it has specifically been held that father of the defendant, who represented himself to be the GPA, has accepted the summons and also put the signatures over the document, by virtue of which, pakka points were fixed. Merely a vague

denial is too short to accept the plea of the defendant that demarcation was not conducted in his presence.

24. So far as the decision of this Court in **Mohinder Kumar versus Padam Sood & others**, reported in Latest HLJ 2010 (HP) 720, relied upon by the learned counsel for the appellant/defendant, is concerned, the same is not applicable to the facts and circumstances of the present case, as signatures of the brother of respondent were obtained on some other date and authorization was not proved, whereas, in this case, there was no occasion for the Local Commissioner to doubt the stand of the father of the defendant, when, he represented himself to be the GPA of his son Avtar Singh.

25. As stated above, pleadings are the backbone of the case of the parties. When, the stand of the plaintiff with regard to his ownership and possession over the suit land has been admitted, then, his further stand that he has no concern whatsoever with the suit land, is a

fact, which would falsify the stand of the defendant that at the time of demarcation, he was not present on the spot, nor was summoned, whereas, it has been proved that notice of demarcation was received by his father and thereafter, when, the pakka points were fixed, he had put signatures over it as GPA of the defendant. Moreover, the learned trial Court, as well as, learned First Appellate Court have elaborately considered this point. As such, there is no scope of interference by this Court with the judgments and decrees, passed by both the Courts below, that too in the Regular Second Appeal, where the findings can only be interfered, if the same falls within the definition of 'perverse findings'.

26. In view of above, the substantial question of law is answered against the appellant and the appeal is dismissed and the judgments and decrees, passed by both the Courts below, are upheld.

27. Decree-sheet be prepared accordingly.

28. The pending application(s), if any, are also disposed of.

29. Send down the record.

18.5.2026
Kalpana

(Virender Singh)
Judge