CNR No: PHHC011030862025
2026:PHHC:128505

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2330-2025 (O&M)

Ramwati and others

. . . . Appellant

Vs.

Ram Kumar Singh (deceased) through Legal heirs and another

. . . . Respondents

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Reserved on:10.09.2026
Pronounced on: 11.09.2026
Pronounced Fully/Operative Part: Full

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. S.K. Chauhan, Advocate, for the appellants.

Mr. Rajesh Sharma, Advocate, for the caveator/respondents.

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DEEPAK GUPTA, J.

The appellants-plaintiffs are in second appeal against the judgment and decree dated 08.04.2025 passed by the learned Additional District Judge, Bhiwani, whereby their appeal against the judgment and decree dated 10.04.2018 passed by the learned Civil Judge (Junior Division), Bhiwani, dismissing their suit, has also been dismissed.

2. The plaintiffs had instituted the suit seeking declaration that they along with defendant No.1 were owners of land comprised in Khewat No.958/952/1, Khatoni Nos.1112 and 1136, Khasra/Killa No.803//2(9-11), measuring 9 kanal 11 marla, being successors of Har Swaroop, and further sought recovery of possession of the portion allegedly encroached upon by defendant No.2 and consequential injunction.

3. Defendant No.2 contested the suit, asserting that he was owner in possession of 'Verma Nursing Home' and that the land on which the hospital stood, had been purchased by him through registered sale deeds. It was further his case that the nursing home had been in his possession since 1988.

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4. The learned Trial Court, after framing the requisite issues and recording evidence of both sides, dismissed the suit. The primary finding was that the plaintiffs had failed to establish either the identity of the property allegedly encroached upon or their title thereto. In particular, the Court noticed that although the plaintiffs relied upon jamabandi, mutations and other revenue documents, the site plan relied upon by them had not been proved through its author or any competent witness. It was also noticed that the plaintiffs' own witnesses admitted the existence of the hospital at the disputed site.

5. The first appellate Court independently examined the matter. It noticed that the plaintiffs had relied upon the jamabandi for the year 2007-08, Fard Badar and mutations No.20038 and 10148, besides the site plan. However, the site plan had not been proved by examining the concerned witness. The appellate Court further noticed that the defendant had produced material showing the existence of Verma Hospital since 1988 and that PW1 and PW2 had admitted knowledge of the hospital for a considerable period.

6. More significantly, the first appellate Court considered the verification report Ex.D5 of the Tehsildar, Bhiwani, which recorded that Verma Nursing Home was not situated on Killa No.803//2(9-11). The plaintiffs had not produced any demarcation report to contradict the said official report. The Court consequently held that there was no cogent evidence establishing that the hospital or any portion thereof stood upon the land claimed by the plaintiffs.

7. The finding regarding title is equally material. The jamabandi for the year 2007-08, relied upon by the plaintiffs themselves, recorded Municipal Committee, Bhiwani as owner of Khasra No.803//2(9-11). No document was produced to establish that Har Swaroop, predecessor of the plaintiffs, had ever been the owner of the said property. The mutation relating to the inheritance of Har Swaroop also did not establish that the disputed khasra number had devolved upon the plaintiffs.

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8. Learned counsel for the appellants has sought to contend that the Courts below have misread the revenue record and that the identity of the suit property stood established. It is also contended that no effective challenge was put to the plaintiffs' witnesses regarding the identity of the property. However, these submissions essentially invite this Court to undertake a fresh appreciation of the evidence and substitute its own conclusion for the concurrent conclusions reached by the Courts below.

9. Such an exercise is impermissible in a second appeal unless the appellants show that the findings recorded by the Courts below are perverse, based on no evidence, founded upon a misreading of material evidence, or otherwise give rise to a substantial question of law. The jurisdiction under Section 100 CPC is not a third appellate jurisdiction. The Hon'ble Supreme Court has consistently held that a substantial question of law must be a question which is debatable, material to the decision of the case and not merely a question of appreciation or re-appreciation of evidence.

10. In ***Santosh Hazari v. Purushottam Tiwari (Dead) by LRs., (2001) 3 SCC 179,*** the Hon'ble Supreme Court explained the scope of a substantial question of law under Section 100 CPC and emphasised that a question of fact, however erroneous the appreciation may appear to be, does not ordinarily become a substantial question of law. The principle was reiterated in ***Hero Vinoth (Minor) v. Seshammal, (2006) 5 SCC 545,*** wherein it was held that interference with concurrent findings is warranted only in exceptional circumstances, such as where the findings are based on no evidence, are perverse, or have been arrived at by ignoring material evidence or applying an erroneous legal principle.

11. Tested on the aforesaid parameters, no substantial question of law arises in the present appeal.

12. The plaintiffs were required, in the first instance, to establish their own title and thereafter to establish that the property allegedly encroached upon by defendant No.2 was in fact the very property claimed by them. The burden could not be discharged merely by asserting that they were successors

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of Har Swaroop. The Trial Court specifically found that the plaintiffs had failed to prove how Har Swaroop had acquired title to the land in question. The first appellate Court independently affirmed this finding, observing that no evidence had been brought on record to establish title of Har Swaroop to the disputed property.

13. Likewise, the question whether the Verma Nursing Hospital stood upon Khasra No.803//2(9-11) was essentially a question of identification of the subject property. The official verification report Ex.D5 supported the defendant's case, whereas the plaintiffs produced no demarcation report to establish the contrary. The first appellate Court, therefore, cannot be said to have arrived at a conclusion, which is either perverse or unsupported by evidence.

14. The submission that no suggestion was put to PW1 and PW2 regarding the identity of the property does not alter the position. The plaintiffs carried the initial burden of establishing their title and identifying the property in respect of which declaratory and possessory relief was sought. An omission in cross-examination cannot, by itself, relieve a plaintiff of the burden of proving the essential ingredients of his own case.

15. There is another significant circumstance. The plaintiffs' witnesses admitted the existence of the hospital at the spot for a substantial period, whereas the suit was instituted in the year 2015. The first appellate Court noticed that PW1 admitted that the hospital had been constructed more than 25 years earlier and PW2 stated that the plaintiffs had come to know of the nursing home 12-15 years earlier. The appellate Court found this circumstance inconsistent with the pleaded case that the alleged encroachment had been objected to only shortly before institution of the suit.

16. Thus, the conclusions of the Courts below are based upon appreciation of oral as well as documentary evidence, including the revenue record, mutation entries and official verification report. The first appellate Court has also given cogent reasons for affirming the judgment of the Trial

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Court and has specifically dealt with the principal contentions raised by the plaintiffs.

17. It is settled that concurrent findings of fact cannot be interfered with in second appeal merely because another view of the evidence is possible. The present case does not disclose any substantial question of law, much less one warranting admission of the appeal under Section 100 CPC.

18. Learned counsel for the appellants has not been able to point out any material piece of evidence which has been perversely ignored by the Courts below or any finding which is demonstrably contrary to the record. The challenge raised is, in substance, directed against the appreciation of evidence.

19. No substantial question of law arises for consideration. The appeal is, accordingly, dismissed. Pending miscellaneous application(s), if any, shall stand disposed of accordingly.

(DEEPAK GUPTA)

11.09.2026 **JUDGE**

Vivek

Whether Speaking/reasoned *Yes*
Whether reportable *No*

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