
(2022) 11 SHI CK 0051

High Court Of Himachal Pradesh

Case No: Regular Second Appeal No. 375 Of 2009

Basu Dev & Ors

APPELLANT

Vs

Narad

RESPONDENT

Date of Decision: Nov. 25, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 136
- Code Of Civil Procedure, 1908 - Section 96, 100, 100(5), Order 8 Rule 10, Order 9, Order 20 Rule 5, Order 22 Rule 4(4)

Hon'ble Judges: Jyotsna Rewal Dua, J

Bench: Single Bench

Advocate: Naresh Kumar Sood, Aman Sood, R.K. Gautam, Jai Ram Sharma

Final Decision: Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Decree of permanent prohibitory & mandatory injunction granted in favour of the plaintiff by the learned Trial Court was affirmed by the learned

First Appellate Court with slight modification in the relief clause. Aggrieved, the legal heirs of original defendant have filed this second appeal.

2. Facts.

2(i). Civil Suit was instituted by One Narad Ram. He prayed for decree of permanent prohibitory injunction against the defendant Budhu Ram. The

suit land was Khasra Nos.54 and 52 situated in Mohal and Mouja Bundla, Tehsil Palampur, District Kangra, H.P. The case of the plaintiff was that:-

2(i)(a) Khasra No.54 land measuring 0-03-37 hectares is entered in ownership of State of Himachal Pradesh and in the possession of Aab Pash

Kunindgan. Plaintiff is a Bartandaran of Mohal and Mouja Bundla. Khasra No. 54 is Gair Mumkin Kuhl (water channel). The

plaintiff has got right to irrigate his land from the water of said Kuhl. The defendant is also Bartandaran of the Mohal and Mouja

Bundla. He has also got right of irrigation through the suit land but he has no right to raise construction on the suit land or to block the Kuhl by

raising structure thereupon.

2(i)(b) Khasra No.52 measures 1-14-08 hectares. The said khasra is recorded as Charagah Bila Darakhtan. Being Bartandaran of

Mohal and Mouja Bundla, the plaintiff has got grazing right in this land. The defendant in the capacity as Bartandaran has also got right of

grazing but he has no right to raise construction over the suit land.

2(i)(c) The defendant constructed a path over the suit land comprised in Khasra No.52 and a room on Khasra No.54 measuring 10 feet in length and 8

feet in breadth. These constructions were raised by the defendant during the pendency of the suit and after the service of stay order upon him. The

matter was reported to the Pradhan Gram Panchayat Bundla. Police protection was also obtained from the learned Trial Court for enforcing the

interim stay order granted by it, yet the suit land was encroached by the defendant.

2(ii) The defendant was served in the civil suit. Though he put in appearance in the Court through his counsel but he allowed himself to be proceeded

ex-parte on 5.6.2000. Plaintiff led oral as well as documentary evidence in support of his pleadings.

2(iii) After appreciating the pleadings and the evidence led by the plaintiff, learned Trial Court on 1.12.2003 passed a decree of permanent prohibitory

injunction in favour of plaintiff restraining the defendant from changing the nature of suit land by raising any construction thereon. The decree of

mandatory injunction was also passed in plaintiff's favour, compelling the defendant to demolish the portion constructed by him in Khasra Nos.52

and 54 as shown in the site-plan (Ext. P-5). The site-plan Ext.P-5 was made part of the decree.

2(iv) Legal heirs of defendant-Budhu Ram preferred First Appeal under Section 96 of the Code of Civil Procedure (CPC) against the judgment and

decree passed by the learned Trial Court. 2(iv)(a) The legal heirs of original defendant inter alia pleaded in their first appeal that Budhu Ram their

predecessor-in-interest had died on 7.2.2001. The judgment and decree passed by the learned Trial Court dated 1.12.2003 being against a dead person

was nullity. Learned First Appellate Court did not find force in this contention. On facts, it was observed that original defendant Budhu Ram's

death had been brought to the notice of the learned Trial Court on 27.2.2001.

Plaintiff's counsel had prayed for exemption from filing the

application to bring on record the legal heirs of the deceased-Budhu Ram. Since he was already proceeded ex-parte vide order passed on 5.6.2000,

learned Trial Court had allowed this prayer by observing that the original defendant-Budhu Ram was proceeded ex-parte, hence, in light of Order 22

Rule 4(4) CPC, there was no need to bring on record his legal heirs. While rejecting the contention of legal heirs of Budhu Ram, learned First

Appellate Court also took note of the fact that there was no recital in the orders passed by the learned Trial Court that counsel representing the

original defendant ever pleaded no instructions. That on 5.6.2000, when the case was called, neither the defendant nor his advocate appeared, hence,

the defendant was proceeded ex-parte in accordance with law. Defendant had neither filed any written statement nor contested the suit. Thus, the

exemption granted by the learned Trial Court to the plaintiff from bringing on record the legal heirs of deceased-defendant Budhu Ram was held to be

in order. This finding of learned First Appellate Court has now attained finality.

2(iv)(b) The next contention advanced on behalf of legal heirs of original defendant-Budhu Ram before the learned First Appellate Court was that all

rights, title and interests over the suit land stood vested in the State of Himachal Pradesh free from all encumbrances. No right of any kind was

available with the plaintiff, which would entitle him to institute the civil suit. This submission was also turned-down by the learned First Appellate Court

on the basis of documentary evidence on record. It was held that Khasra No.54 was in the ownership of the State of Himachal Pradesh but in

possession of 'Aab Pash Kunindgan'. The nature of land in the revenue document is recorded as 'Gair Mumkin Kuhl' (water channel).

No one could be allowed to block the water channel for his personal interest. Similarly in respect of Khasra No.52, the observation was that the State

of Himachal Pradesh is though owner of this khasra number but in the cultivation column 'Bartandaran' reserve pool (right holders) have been

recorded. The nature of this land depicted in the revenue document is 'Charagah' (pasture). The learned First Appellate Court held that no one

could be allowed to change the nature of pasture or disturb the reserve pool land in any manner. The contention advanced on behalf of legal heirs of

original defendant-Budhu Ram that the oral & documentary evidence produced by the plaintiff was not appreciated properly by the learned First

Appellate Court was also rejected.

2(iv)(c) The appeal preferred by the legal heirs of original defendant-Budhu Ram was dismissed on 02.05.2009 by the learned First Appellate Court.

The judgment and decree dated 01.12.2003 passed by the learned Trial Court was affirmed. However, it was ordered that before executing the order

of demolition of super-structure, the Executing Court will get the suit land demarcated from a Revenue Officer not below the rank of Tehsildar with

further direction that if the defendant was found to have encroached upon any portion of Khasra Nos.52 and 54 by way of blocking the water channel

or any construction thereupon, the same should be demolished only after receipt of demarcation report of Tehsildar.

3. Having suffered two concurrent judgments and decrees passed by the learned Courts below, the defendants, legal heirs of original defendant Budhu

Ram have preferred this regular second appeal under Section 100 of the Code of Civil Procedure. This appeal was admitted on 16.03.2010 on the

following substantial questions of law:-

1. Whether impugned decree for demolition of structure is vitiated as the court below has failed to conclusively determine the factum and extent

of alleged encroachment on suit land and thereby ordering the ascertainment of encroachment, if any, to be determined by way of demarcation at the

execution stage?

2. Whether documents Exhibit P-5 (self serving site plan), reports exhibit P-10 and P-11 (prepared by PW 2 on visual inspection of the spot) in the

absence of proper demarcation report and Plan of Encroachment (Naksha Tafawat) can not be said to be a sufficient, cogent and lawful proof of

allegations of encroachment as laid in the present suit?

3. Whether the findings of the courts below are vitiated for misreading and misconstruing the legal effect of documents Exhibit P-5 (Site Plan) ,

Exhibits P-6 and P-7 (Photographs) and Exhibits P-10 and P-11 (Reports of the Pradhan Gram Panchayat PW2)?

4. I have heard learned counsel for the parties on the above substantial questions of law and with their assistance gone through the record.

5. Substantial Question of Law No.1 (moulding of reliefs)

5(i) Contentions

Learned Senior Counsel for the appellants/defendants submitted that the decree passed by the learned Trial Court is not executable. That Khasra

Nos.54 and 52 are large parcels of land. Without identifying the exact extent of encroachment over these two khasra numbers, the decree for

mandatory injunction could not have been passed by the learned Trial Court. Such decree is un- executable. It was contended that the learned First

Appellate Court erred in moulding the reliefs.

Learned Senior Counsel for the respondent-plaintiff defended the moulding of reliefs by the learned First Appellate Court. It was argued that power to

mould the reliefs lay with the Court and had been justly exercised in the facts of the case. The concern of the defendants have already been taken

care of by the learned First Appellate Court in moulding the reliefs.

5(ii) Observations

5(ii)(a) The plaintiff had prayed for permanent prohibitory and mandatory injunction over the suit land. Learned Trial Court granted permanent

prohibitory injunction and restrained the defendants from interfering over the suit land. Mandatory injunction was also granted by the learned Trial

Court directing the defendants to demolish the construction raised by them over the suit land. Learned First Appellate Court has affirmed the judgment

and decree passed by the learned Trial Court. However, insofar as the mandatory injunction is concerned, the relief was slightly moulded. The

modification was that before ordering demolition of super-structure over the suit land, it would be demarcated by the Revenue Officer not below the

rank of Tehsildar and in case the defendant was found to have encroached upon any portion of Khasra Nos.52 and 54, then the same would be

demolished on receipt of demarcation report. Moulding of relief can be resorted to at the time of consideration of final relief in the main suit.

Reference in this regard can be made to (2018) 17 SCC 203 titled Samir Narain Bhojwani Vs. Aurora Properties and Investments and another.

Relevant paragraphs thereof reads as under:-

“24. That apart, the learned Single Judge as well as the Division Bench have committed fundamental error in applying the principle of moulding of

relief which could at best be resorted to at the time of consideration of final relief in the main suit and not at an interlocutory stage. The nature of

order passed against the appellant is undeniably a mandatory order at an interlocutory stage. There is marked distinction between moulding of relief

and granting mandatory relief at an interlocutory stage. As regards the latter, that can be granted only to restore the status quo and not to establish a

new set of things differing from the state which existed at the date when the suit was instituted. This Court in Dorab Cawasji Warden Versus Coomi

Sorab Warden and Others, has had occasion to consider the circumstances warranting grant of interlocutory mandatory injunction. In paragraphs 16

& 17, after analysing the legal precedents on the point as noticed in paragraphs 11-15, the Court went on to observe as follows:

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested

status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have

been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a

party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or

alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved

certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory

injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion

of the court to be exercised in the light of the facts and circumstances in each case.

Though the above guidelines are neither exhaustive nor complete

or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions

would be a sound exercise of a judicial discretion.

25 to 27“

28. Reverting to the decision in *Gaiv Dinshaw Irani*, (supra), relied upon by the High Court, the Court moulded the relief in favour of the party to the

proceedings to do substantial justice whilst finally disposing of the proceedings and did not do so at an interlocutory stage. In other words, reliance

placed on the principle of moulding of relief is inapposite to the fact situation of the present case.

It is well settled that to meet exigencies of situations, the Court can always mould the reliefs. Reference in this regard can be made to (2014) 8 SCC

294 titled Gaiv Dinshaw Irani and ors. Vs Tehmtan Irani and Ors., wherein it was observed that the Court may mould the relief in accordance with

changed circumstances for shortening the litigation or to do complete justice. Following paragraphs relevant to the context will be appropriate to be

extracted:-

“50. This was further followed in Lekh Raj vs. Muni Lal & Ors. This Court in Sheshambal (dead) through LRs vs. Chelur Corporation Chelur

Building & Ors. while discussing the issue of taking cognizance of subsequent events held that:

“19. To the same effect is the decision of this Court in Om Prakash Gupta case where the Court declared that although the ordinary rule of civil

law is that the rights of the parties stand crystallised on the date of the institution of the suit yet the court has power to mould the relief in case the

following three conditions are satisfied:

“11. (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties;

and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite

party is not taken by surprise.

51. This Court in Rajesh D. Darbar V. Narasingrao Krishnaji Kuklarni, a matter regarding the elections in a registered society, held that the courts can

mould relief accordingly taking note of subsequent events. Furthermore, in Beg Raj Singh vs. State of Uttar Pradesh & Ors. while deciding on the

issue of renewal of a mining lease held that:

“A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events

between the commencement of litigation and the date of decision.

The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being

granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents

because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment.”

52. Even this Court while exercising its powers under Article

136 can take note of subsequent events (See: Bihar State Financial Corporation & Ors. vs. Chemicot India (P) Ltd. & Ors. Parents Association of

Students vs. M.A. Khan State of Uttar Pradesh & Ors. vs. Mahindra & Mahindra Ltd

53. Thus, when the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed

circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice.

54. The appellants during the pendency of the Civil Suits sought interim orders from the High Court and on the basis of order dated April 20, 1988

constructed the structure on the condition that rights of five flats were to be retained and they were subject to the outcome of the suit. In another

order dated October 16, 1991 the appellants were once again restrained from the creation of third party rights with respect to the five demarcated

flats. The appellants being well aware of the risks and consequences, carried on with the construction. During the pendency of the First Appeal, it has

been pointed out that the appellants had given two of the five flats on leave and licence and continued to enjoy benefits from the same since 1997. The

appellants are occupying two of the other nine flats and benefits from the remainder are being enjoyed by them.

55. In wake of the above, we are of the opinion that the High Court taking note of the subsequent events has correctly moulded the relief and allotted

five flats to the respondent Nos. 1 to 5 as per their share.

5(ii)(b) The relief moulded by the learned First Appellate Court in fact takes care of any misgiving, which appellants-defendants may have. The

defendants have not made any grievance about the decree of permanent prohibitory injunction granted against them. Their grievance is only confined

to the mandatory injunction issued in favour of the plaintiff. Apprehensions expressed on behalf of the defendants have been taken care of by the

learned First Appellate Court while moulding the reliefs .

5(ii)(c) Before the learned First Appellate Court, the defendants had not specifically taken the plea of having not raised any construction over Khasra

Nos. 54 and 52. In (1997) 5 SCC 438, titled Kshitish Chandra Purkait Vs. Santosh Kumar Purkait & Ors. the High Court had entertained a new plea

as a legal plea and consequently allowed the second appeal. Observing that neither any specific plea was taken nor specific issues were framed in

that regard, the Hon'ble Apex Court held that the High Court failed to bear in mind that it is not every question of law that could be permitted to

be raised in second appeal. The parameters within which a new legal plea could be permitted to be raised, are specifically stated in sub-section (5) of

Section 100 CPC. Under the proviso, the Court should be "satisfied" that the case involves a "substantial question of law" and not a mere

"question of law".

The observation made above was reiterated by the Hon'ble Apex Court while deciding Civil Appeal No. 6857/2022 on 22.9.2022 titled

Chandrabhan (Deceased) through legal heirs & Ors. Vs Saraswati & Ors. Thus, the defendants cannot even be allowed to take new plea at the stage

of second appeal, which is otherwise purely factual. In their appeal, the defendants had only pleaded that the decree passed by the learned Trial Court

was nullity having been passed against a dead person and that plaintiff had no right to seek the relief on account of State being owner of the suit land.

Under the circumstances, moulding of reliefs as done by the learned First Appellate Court was in order.

Accordingly substantial question of law is answered against the appellants-defendants and in favour of the respondent-plaintiff.

6. Substantial Question of Law Nos.2 and 3. Being interconnected and involving overlapping discussions, these two questions are being considered

together hereinafter:-

6(i) Contentions

Learned Senior Counsel for the appellants (defendants) submitted that the site-plan (Ext.P-5) prepared by the clerk of plaintiff's counsel shows

encroachment allegedly made by the defendants over Khasra Nos.54 and 52. It is only a self serving document neither made to the scale nor

supported by any other valid legal evidence. It was further contended that the photographs Ext. P-6, P-7 and P-13 adduced by the plaintiff for proving

encroachment on the suit land are not sufficient to prove that any specific portion of Khasra Nos.52 and 54 was encroached, obstructed or built upon

by the defendants. Khasra Nos.52 and 54 are big chunk of land parcels measuring 0-03-37 hectares and 1-14-08 hectares respectively. Mere

production of photographs of certain constructions cannot establish that these constructions were actually raised over the suit land. It was next

submitted that reports of Pradhan Gram Panchayat Bundla (Ext.P-10 and P-11) would also not advance plaintiff's case that the construction

alleged to have been raised by the defendants were over the suit land. The gist of arguments advanced by learned Senior Counsel for the

appellants/defendants was that the evidence led by the plaintiff was not sufficient in law to prove and establish his case. The rule of best evidence

was not followed in the case.

Defending the impugned judgments and decrees concurrently passed in favour of the plaintiff, learned Senior Counsel appearing for the respondent

submitted that the original defendant was proceeded ex-parte. He had not filed any written statement. By leading oral as well documentary evidence,

the plaintiff had proved his case of interference over the suit land by the defendant. The plaintiff had established that the defendant was not entitled to

interfere over the suit land. The plaintiff had also established the factum of defendant's having raised construction over the suit land. Learned

Senior Counsel also submitted that the plaintiff had adduced best evidence in the facts and circumstances of the case. The evidence was properly

appreciated by both the learned Courts below.

6(ii) Observations

6(ii)(a) Admittedly despite having been served, the defendant (Budhu Ram) chose not to file any written statement. Neither the counsel engaged by

the defendant nor he himself appeared in the suit and as such vide order dated 05.06.2000, he was proceeded ex-parte by the learned Trial Court. The

order has now attained finality.

6(ii)(b) (2003) 7 SCC 350 titled Ramesh Chand Ardawatiya Vs. Anil Panjwani holds that even if the suit proceeds ex-parte and in the absence of a

written statement, unless the applicability of Order 8 Rule 10 of the CPC is attracted and the Court acts thereunder, the necessity of proof by the

plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the

plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the

plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under

Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the Trial Court would scrutinize the available pleadings and

documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte judgment

dealing with the points at issue one by one. Merely because the defendant is absent, the Court shall not admit evidence the admissibility whereof is

excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.

In (2015) 5 SCC 588 titled Maya Devi Vs. Lalta Prasad, it was held that the absence of the defendant does not absolve the Trial Court from fully

satisfying itself of the factual and legal veracity of the Plaintiff's claim, this feature of the litigation casts a greater responsibility and onerous

obligation on the Trial Court as well as the Executing Court to be fully satisfied that the claim has been proved and substantiated to the hilt by the

plaintiff. The failure to file a Written Statement, thereby bringing Order 8 Rule 10 of the CPC into operation, or the factum of Defendant having been

set ex parte, does not invite a punishment in the form of an automatic decree. Both under Order 8 Rule 10 CPC and on the invocation of Order 9 of

the CPC, the Court is nevertheless duty-bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted.

6(ii)(c) The plaintiff in support of his pleadings adduced documentary evidence i.e. Ext.P-1, jamabandi for the year 1997-98, reflecting Khasra No.54

to be in the ownership of State of Himachal Pradesh and in possession of Aab Pash Kunindgan. The nature of this land is recorded as Gair

Mumkin Kuhl (water channel). Ext.P-2 is also a jamabandi for the year 1997-98 depicting Khasra No.52 to be in the ownership of State of

Himachal Pradesh and in possession of Bartandaran (reserve pool). The nature of this land is recorded as Charagah (pasture).

6(ii)(d) Both khasra numbers constituting the suit land are therefore, though owned by State of Himachal Pradesh but right holders of the village are

entitled to exercise their rights of getting their land irrigated through Kuhl existing on the suit land and also to use the suit land as pasture land without

any obstruction. Ext.P-4 is a field map (Tatima) placed on record by the plaintiff showing the suit land alongwith adjoining Khasra Nos. 56 and 58.

Ext.P-5 is the site-plan prepared by one Sh. Kartar Chand Clerk to the counsel of the plaintiff. The site-plan shows that a path has been constructed

over Khasra No.52 connecting Khasra No.54 to a main road through khasra No.52. The site-plan also reflects that a 10 feet long and 8 feet wide

room has been constructed over Khasra No.54. In support of site plan, photographs of construction in form of path (stairs) and a room have been

proved in evidence as Ext.P-6, Ext.P-7 and Ext.P-13. Ext.P-6 and Ext. P-13 are the photographs showing the construction of room, whereas Ext. P -7

is a photograph of a path on the face of pleadings & evidence on record.

6(ii)(e) It cannot be said that the plaintiff had not adduced the best evidence possible. Defendant had chosen not to contest the suit. Plaintiff had

placed on record a site-plan depicting encroachment with the measurement of the construction raised over the suit land. The defendant had not

disputed that he had not raised the construction. The site-plan (Ext. P-5) and the photographs (Ext. P-6, P-7 and P-13) establish plaintiff's pleaded

case of construction having been raised by the defendant over Khasra Nos. 54 and 52. Ext.P-10 is a verification report prepared by the Pradhan

Gram Panchayat Bundla. The report states that in-violation of stay order granted by the learned Trial Court, the defendant-Budhu Ram had raised

construction over the suit land. To the same effect is the certificate issued by the Pradhan Gram Panchayat Bundla at Ext.P-11. Ext.P-12 is the report

of the Police Official to the effect that the defendant had violated the stay order granted by the learned Trial Court by raising construction over the

suit land. All these documents lead credence to the case of plaintiff's that the defendant had constructed over the suit land i.e. Khasra Nos.54 and

52 by raising a room and a path respectively. Apart from the documentary evidence, the plaintiff had also produced three witnesses in support of his

case. While appearing as PW-1, plaintiff narrated his pleaded case and stated that his right over the suit land had been interfered by the defendant by

raising construction over it. Consequently he has been deprived of his right to irrigate his land through Kuhl existing over Khasra No.54 and also

deprived to use Khasra No.52 as pasture land. Pradhan of Gram Panchayat Bundla stepped in the witness box. As PW-2, he testified the nature of

suit land as Kuhl (water channel) and pasture land. He also proved the reports prepared by him (Ext.P10 & P-11) and stated that the defendant had

constructed the suit land. To similar effect is the deposition of PW-2 a member of the concerned panchayat.

The oral and documentary evidence led by the plaintiff proves that the defendant had encroached over Khasra Nos. 54 and 52. The defendant had no

right to raise any construction over these two khasra numbers and to cause interference over exercise of plaintiff's rights thereupon. The site-plan

Ext.P-5 might have been prepared by the clerk of the counsel, however, the length and width of the room constructed by the defendant over Khasra

No.54 had been described therein. Even otherwise, the defendant had not denied raising of construction over the suit land. The legal heirs of

defendant-Budhu Ram in their appeal filed before the learned First Appellate Court did not specifically deny raising of construction by their

predecessor over the suit land. It was established on record that the Pradhan Gram Panchayat as well as the Police Officials had reported raising of

construction by the defendant over the suit land. In fact, learned Trial Court had provided police assistance vide order dated 6.6.2000, for enforcing its

injunction order. The very fact, that defendants have come up in appeal not against the permanent prohibitory injunction granted against them but

against the mandatory injunction goes on to show that their predecessor had raised construction over the suit land. In any event, learned First

Appellate Court by moulding the reliefs has taken care of apprehension of the defendants for getting the suit land demarcated before ordering

demolition of encroachment.

The substantial questions of law No.1 and 2 are answered against the appellants/defendants and in favour of the respondent/plaintiff.

7. In view of the above discussion, the impugned judgments and decrees concurrently passed by the learned Courts below cannot be said to be

suffering from any infirmity. There is no merit in this second appeal. The same is accordingly dismissed.

Pending miscellaneous applications, if any, also stand disposed of.