

(2014) 07 P&H CK 0229

High Court Of Punjab And Haryana At Chandigarh**Case No:** RSA No. 3543 of 2001 (O&M)

Karnal Improvement Trust

APPELLANT

Vs

Ishwar Chander

RESPONDENT

Date of Decision: July 8, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 14

Hon'ble Judges: Rajesh Bindal, J**Bench:** Single Bench**Advocate:** C.B. Goel and Jaswinder Singh, Advocate for the Appellant; B.S. Bedi and Adarsh Jain, Advocate for the Respondent

Judgement

Rajesh Bindal, J.

This order deals with RSA No. 3543 of 2001 and COCP Nos. 2048 of 2009 and 1049 of 2011, as contempt petitions arise out of alleged violation of interim orders passed in the appeal.

2. The defendant-Karnal Improvement Trust has filed the present appeal impugning the judgments and decrees of both the courts below.

3. It is a case in which a suit was filed by the respondent-plaintiff for permanent and mandatory injunction seeking restraint against the appellant from demolishing any portion of the construction raised in the area ear-marked as "EBCF" in the site plan and further for a direction to the appellant to re-construct the demolished portion or for suitably compensating the respondent-plaintiff. It was pleaded that the respondent-plaintiff is owner in possession of the house constructed on plot No. 19, situated at Randhir Colony, Kunjpura Road, Karnal, which he purchased vide registered sale deed dated 25.4.1975. The defendant claimed some portion of the plot of its own property.

4. In the written statement, the appellant-defendant pleaded that the respondent-plaintiff has not come to the court with clean hands and suppressed

material facts. After demarcation of the disputed property, it was found that the respondent-plaintiff has made encroachment on the land of the appellant comprising khasra No. 5848, which is part of Old Mugal Canal in addition to the portion of land purchased by him.

5. In the replication, the respondent-plaintiff controverted the pleas taken in the written statement and reiterated the stand taken in the plaint.

6. On the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is owner in possession of suit property? OPP

2. Whether the defendant has got no right to demolish the property marked EBCF on the site plan? OPP

3. Whether the property shown in red in the plan is part of khasra No. 5848? OPD

4. Whether the plaintiff has suppressed the material facts from this court, if so to what effect? OPD

5. Whether the property shown as mark ABCD prepared by the defendant is in unauthorised possession of the plaintiff? OPD

6. Whether the suit is bad for mis-joinder and non-joinder of parties? OPD

7. Relief.

7. The trial court, vide judgment and decree dated 25.8.2000, decided all the issues in favour of the respondent-plaintiff and decreed the suit of the respondent-plaintiff thereby restraining the appellant from demolishing the property in dispute and also directing for re-construction of the property, which was demolished. The judgment and decree of the trial court was upheld in appeal vide judgment and decree dated 16.4.2001.

8. Initially, when the appeal was filed, no substantial questions of law were framed in the grounds of appeal. Subsequently, the same were furnished in court, which are as under:

1. Whether the plaintiff can seek permanent injunction/mandatory injunction against the appellant Trust regarding the land of which he is not the owner and under the guise of the decree for injunction can encroach upon the above property which belongs to the defendant/appellant?

2. Admittedly the plaintiff has purchased a residential plot measuring 166 square yards vide registered sale deed dated 25.4.1975 situated in Randhir Colony, Kunjpura Road, Karnal of which boundaries have been detailed in the sale deed and the sale deed is also accompanied by a site plan. Whether the plaintiff can claim area more than what he has purchased in the said sale deed?

3. Whether on the facts and circumstances of the case judgments and decree passed by the courts below can legally be sustained?
4. Whether the plaintiff can be granted a decree of permanent injunction/mandatory injunction with regard to the area which has not even been claimed in the suit and the site plan annexed with the plaint and, therefore, whether the judgments and decrees of the courts below granting such relief can legally be sustained in law?
5. Whether the judgments and decree of the courts below can legally be sustained when the courts below have failed to take into consideration and pass appropriate orders on the objections filed by the appellant Trust against the report dated 15.4.1997? The said report, on the face of it, is palpably/factually wrong.

Arguments on behalf of the appellant in the appeal

9. Learned counsel for the appellant submitted that admittedly the respondent-plaintiff had purchased plot No. 19, situated in Randhir Colony, Kunjpura Road, Karnal vide registered sale deed dated 25.4.1975 marked as ABCD in the site plan annexed. The dimensions of the plot on all four sides and the identity of the property had been clearly mentioned. The same was 50 feet on East, 48 feet on West, 26 feet on North and 35 feet in South. The total area of the plot was 166.05 square yards. In addition to the aforesaid area, the plaintiff encroached about 105 square yards of land owned by the appellant forming part of khasra No. 5848 identified as Old Mugal Canal. The appellant had demolished the construction raised by the respondent in the aforesaid encroached area. However, as the respondent-plaintiff, who is a lawyer by profession, was well aware of the fact that he may not be able to stake a claim pertaining to the area encroached by him, he cleverly drafted the plaint by stating that the appellant is seeking to demolish the construction raised by the respondent-plaintiff in the area owned by him.
10. Learned counsel further submitted that the appellant does not have any objection in case the relief prayed for by the respondent-plaintiff in the suit to the extent of permanent injunction pertaining to the plot purchased by him is granted. As the appellant did not demolish any construction raised by the respondent-plaintiff in the area owned by him, there is no question of granting him the relief of mandatory injunction either for re-construction or for payment of compensation. While referring to document (Ex. D-4), learned counsel for the appellant submitted that the area forming part of khasra No. 5848 is owned by the appellant, hence, it has every right to defend its possession on the same.
11. Still further, the submission is that it is a case in which the admitted position on record is that the respondent-plaintiff had purchased 166.05 square yards of land vide registered sale deed dated 25.4.1975 and is in actual possession of 271 square yards of land and is still seeking to protect the same by raising pleas here and there. The plot was purchased by the respondent-plaintiff from Tejinderpal Singh Mann, who had developed the area known as Randhir Colony on Kunjpura Road, Karnal,

carved out the plots and sold the same. The courts below have gone wrong in opining that the additional area in possession of the respondent-plaintiff forms part of khasra No. 5471, which is owned by private person. Learned counsel submitted that a private coloniser would have planned for every inch of land owned by him. He will not leave 105 square yards of land owned by him unplanned. The size of the plot sold to the respondent-plaintiff is evident of the fact that it was at the end of the land owned by the vendor, that is why the size was odd.

12. It was further contended that initially the appellant made efforts for demarcation of the land through a serving revenue official but the respondent-plaintiff never co-operated. The trial court appointed a Local Commissioner, who was a retired Naib Tehsildar. He did not properly demarcate the land, as is evident even from the report and the site plan submitted by him. The objections raised by the appellant at the spot and even subsequent to that in court were not considered by the trial court. The learned lower appellate court also merely noticed that once the learned trial court had referred and relied upon the report of the Local Commissioner, that means the objections have been dismissed, whereas the fact remains that those were required to be dealt with independently in terms of the pleas raised by the appellant. He further submitted that there was another demarcation report prepared by the Kanungo produced by the appellant, which was discarded by the courts below, though was more authentic.

13. Learned counsel further referred to an interim order passed by this court on 20.2.2003, whereby after hearing learned counsels for both the parties and noticing that they agreed to the suggestion, directed for appointment of a Local Commissioner for carrying out measurement of khasra No. 5848 by perusing the relevant record to be produced by the revenue authorities. The Local Commissioner was also to opine as to whether any portion of khasra No. 5848 was in possession of the respondent-plaintiff. The Local Commissioner, after due notice to the parties, visited the spot. The revenue officials present at the spot were directed to produce "Musavi". As the "Musavi" produced by the revenue officials was a photo copy, the same was objected to by the respondent, who produced a certified copy thereof along with a photo copy. The revenue officials even accepted that. The same was made the basis and the measurement/demarcation was carried out in terms thereof. It was further argued that a lot of construction having been raised in the area and noticing that both the parties as well as the revenue officials stated that there was no pucca point in the aforesaid khasra number, certain points were located, in the "Musavi", which were identified as "A" to "E". The existence of those points was admitted by both the parties. Exhaustive report of the demarcation/measurement was prepared by the Local Commissioner with the help of the revenue authorities and it was found that the respondent-plaintiff was in unauthorised possession of khasra No. 5848 to the extent of 116 square yards in addition of plot purchased by him.

14. In the light of the aforesaid fact and the admitted fact being on record that the respondent is in unauthorised occupation of land beyond the area purchased by him, it was submitted by learned counsel for the appellant that the respondent-plaintiff is entitled to relief only to the extent claimed in the suit, namely, protection of his possession to the extent of land purchased by him. For rest of the portion encroached by him, the action taken by the appellant for demolition of the construction cannot be said to be unjustified. The judgments and decrees of the courts below deserve to be reversed.

COCN No. 2048 of 2009

15. Learned counsel for the petitioner submitted that vide order dated 31.1.2006, passed in CM No. 565-C of 2006, this court restrained the respondent from raising any construction on the property in dispute. Despite knowledge about the order passed by this court, the respondent raised construction, hence, he is liable to be punished for committing contempt of this court. He further submitted that the respondent-plaintiff, being an Advocate, himself was well aware of the consequence of the violation of the order passed by this court. He cannot even be permitted to plead ignorance regarding import of the order.

COCN No. 1049 of 2011

16. Learned counsel for the petitioner submitted that vide order dated 5.9.2001, this court restrained the respondent-plaintiff from alienating the property in dispute. Despite this fact, vide sale deed dated 28.3.2011, the respondent had sold the property in dispute to Satbir Singh, Lalit Mohan and Sham Sunder. He further submitted that the respondent-plaintiff, being an Advocate, himself was well aware of the consequence of violation of the order passed by this court. He cannot even be permitted to plead ignorance regarding import of the order. He further submitted that conduct of the respondent is evident from the fact that in addition to the portion of property purchased by him, he had mentioned in the sale deed that additional area of 110 square yards adjoining the property in dispute is in his possession for the last about 50 years and the possession thereof is also being handed over to the vendees.

Arguments on behalf of the respondent in the appeal

17. Learned counsel for the respondent submitted that after the report was submitted by the Local Commissioner in the trial court, the appellant had filed an application for additional evidence and also for appointment of another Local Commissioner. The same was dismissed. The order was not challenged, hence, no fresh Local Commissioner could be appointed by this court even if the respondent had consented to the same. In terms of Order 26 Rule 14 CPC, fresh Local Commissioner could be appointed only after the earlier report had been rejected, which is not the case in hand. Learned counsel further submitted that as per High Court Rules and Orders, usually retired revenue officials should have been

appointed Local Commissioner, but this court had appointed an Advocate. As against that, the trial court had appointed a retired Naib Tehsildar, who was well versed with the area, hence, there is no reason to discard the report submitted by him. The same has rightly been accepted by both the courts below. The instructions issued by the Financial Commissioner regarding demarcation of land, as contained in the High Court Rules and Orders have been totally ignored, hence, the report of the Local Commissioner, as submitted in this court, deserves to be rejected. He further submitted that Local Commissioner appointed by the trial court had fixed pucca points and thereafter carried on demarcation of the land. He had even annexed a site plan prepared by him, which was accepted by both the courts below. The same being finding of fact, does not deserve to be interfered with by this court.

CM No. 4856-C of 2012

18. The abovesaid application has been filed by the vendees, to whom the respondent-plaintiff had sold the property in question vide sale deed dated 28.3.2011. The prayer is for impleading them as parties to the appeal on the plea that their interest would be affected as they have stepped into the shoes of the respondent-plaintiff.

19. As far as merit of the controversy is concerned, learned counsel appearing for the vendees submitted that the issue is as to whether excess portion in possession of the respondent-plaintiff or the vendees is part of khasra No. 5471 or 5848. The appellant owns khasra No. 5848, whereas khasra No. 5471 is in private ownership. Both the courts below have found that additional land in possession of the respondent and consequently the vendees is forming part of khasra No. 5471, of which the appellant is not the owner, hence, it cannot raise any issue regarding the same. While assailing the report of the Local Commissioner appointed by this court, learned counsel submitted that though the Local Commissioner has mentioned in his report that there was no pucca point, but in the objections filed to the report submitted by the Local Commissioner in the trial court, the appellant had stated that there were pucca points available. It was further submitted that the findings recorded by both the courts below are concurrent findings of fact giving rise to no question of law. Merely on the basis of a fresh report of the Local Commissioner, the findings of fact recorded by both the courts below cannot be disturbed. The report before the trial court was submitted by the Local Commissioner, who was a retired Naib Tehsildar, hence, more reliable.

20. Heard learned counsel for the parties and perused the paper book and the relevant referred record.

Findings on CM No. 4856-C of 2012

21. Before the respective contentions of learned counsel for the parties are considered on merits, it would be appropriate to deal with the application filed by the vendees. At the time of issuance of notice of motion on 5.9.2001, this court

restrained the respondent-plaintiff from alienating the suit property. The service was completed on 13.12.2001, from there onwards the respondent-plaintiff is represented. At the time of admission of appeal on 14.11.2006, in the presence of counsel for both the parties, the interim order passed on 5.9.2001 was directed to continue. Despite this fact, the respondent-plaintiff, vide sale deed dated 28.3.2011, sold the property in question to the applicants. The respondent-plaintiff is still represented in the appeal. As the property in question has been sold in violation of the interim order passed by this court during the pendency of the appeal, in my opinion, the vendees do not deserve to be impleaded as party in the appeal as principles of lis pendens will apply, hence, the application filed on their behalf is dismissed. Even otherwise, the interest of the applicants is not affected as they had purchased 166 square yards of land, the possession of which is with them. The respondent is fighting for the area encroached upon by him, the possession of which was given by him to the applicants by specifically mentioning in the sale deed that this portion of additional land is in his possession for the last about 50 years.

Findings in the main appeal

22. The substantial question of law, which arises for consideration in the present appeal, needs to be re-framed. The same are as under:

1. Whether the plaintiff can seek permanent injunction/mandatory injunction against the appellant Trust regarding the land of which he is not the owner and under the guise of the decree for injunction can encroach upon the above property which belongs to the defendant/appellant?

2. Whether the findings recorded by the courts below that the respondent-plaintiff has not encroached upon the land pertaining to khasra No. 5848, which is owned by Improvement Trust, Karnal, are perverse?

23. The admitted facts on record are that the plaintiff, who is a lawyer by profession, purchased plot No. 19, measuring 166 square yards, situated at Randhir Colony, Kunjpura Road, Karnal, vide registered sale deed dated 25.4.1975, the dimensions of which, as mentioned in the sale deed are as under:

24. The respondent-plaintiff is in actual physical possession of 271 square yards of land. Meaning thereby admittedly 105 square yards of land has been encroached upon by him.

25. It is a case in which the suit was filed by the respondent-plaintiff seeking injunction against the appellant-defendant not to interfere in his possession in the suit property, which was owned and possessed by him. Along with the suit, a site plan was annexed showing dimensions of the suit property strictly in terms of the dimensions mentioned in the sale-deed. The area, which was allegedly disputed by the appellant, was shown to be part of the property purchased by the respondent-plaintiff. The definite stand of the appellant is that it has no concern

with the area, as shown in the site plan produced by the respondent-plaintiff with the suit, as it is neither interfering in his possession nor proposes to do the same. It has no objection for decreeing the suit of the respondent-plaintiff to that extent, but the matter does not end here as the real issue in the present case is regarding 105 square yards of land, which has admittedly been encroached upon by the respondent-plaintiff in addition to the area purchased by him.

26. The stand of the appellant is that the area encroached upon by the respondent-plaintiff forms part of khasra No. 5848 identified as part of Old Mugal Canal, which is in the ownership of the appellant, as is evident from the mutation (Ex. D4). The fact that ownership of khasra No. 5848 is with the appellant is not even disputed by the respondent-plaintiff. His case is that the area encroached upon by him forms part of khasra No. 5471, which is not in the ownership of the appellant, hence, it has no concern with that.

27. The learned trial court, while discarding the demarcation report (Ex. D2) produced by the appellant-defendant, placed reliance upon the demarcation report dated 15.4.1997 (Ex. P5) of the Local Commissioner appointed by it to hold that the excess area, which has been encroached upon by the respondent-plaintiff did not form part of khasra No. 5848. The demarcation report produced by the appellant was discarded opining that while carrying out the demarcation, pucca points were not fixed. The appellant had filed objections against the report of the Local Commissioner, appointed by the court, however, as was submitted by learned counsel for the appellant and not denied by learned counsel for the respondent-plaintiff, the same were not decided by the trial court. The learned lower appellate court upheld the findings recorded by the learned trial court while opining that once the trial court had placed reliance upon the demarcation report produced by the Local Commissioner appointed by the court, that means no merit was found in the objections raised by the appellant.

28. When the matter came up before this court, considering the admitted facts on record, namely, that the respondent-plaintiff had encroached upon 105 square yards of land in addition to the land owned by him and the issue was to find out as to whether the encroached upon area forms part of khasra No. 5848 or not, with the consent of learned counsels for the parties, this court passed the following order on 20.2.2003:

Learned counsel for the parties are ad-idem that they shall have no objection if the area comprised in khasra Nos. 5848 is measured and if any area is found in possession of the plaintiff/respondent, the same be directed to be surrendered to the Improvement Trust.

Accordingly, Mr. Vikas Bahl, Advocate, is appointed as Local Commissioner in order to carry out measurement of the aforesaid khasra number by perusing the revenue record, which shall be produced by the Tehsildar/Kanungo/Patwari (Revenue). The

parties shall also be present before the Local Commissioner on the date of his execution of the Commission. The scope of the Commissioner is as under:

(i) Areas of Khasra Nos. 5848 and 5471 shall be measured by perusing the revenue record which shall be produced by the Tehsildar/Kanungo/Patwari (Revenue); (ii) Commission shall be executed after notice to the parties and that the notice be served upon the counsel before this court.

(iii) Local Commissioner may submit a specific report as to whether any area comprised in khasra No. 5848 is in possession of the plaintiff/respondent or not.

In case, any police help is required, intimation be also sent to the S.P., Karnal.

29. The aforesaid order clearly establishes that both the parties had consented to the appointment of the Local Commissioner before this court. Meaning thereby they conceded to the fact that the earlier reports on record either produced by the appellant or the respondent-plaintiff were not worth reliable, hence, to claim at this stage that before discarding the earlier report of the Local Commissioner, a fresh Local Commissioner could not be appointed is totally misconceived. Otherwise also, a perusal of the report (Ex. D2) produced by the appellant shows that demarcation was carried out by the Patwari of the concerned area by fixing some identifiable points. The report (Ex. P5) produced by the Local Commissioner appointed by the trial court shows that he started demarcation/measurement by identifying burji on a bridge opining that the same had been constructed with old bricks. He could not find any pucca point. Though he has mentioned in his report that "Musavi" was produced before him, still he did not point out any spot on "Musavi", as was referred to in the report, rather, prepared a sketch in his own hand (not to scale). On the spot, objection was raised by the officers of the appellant and submitted to the Local Commissioner, as all the concerned parties were not present.

30. The Local Commissioner appointed by this court visited the site on 15.3.2003 after issuing due notices to all the parties concerned and their counsels including Tehsildar, Kanungo and Patwari. As is evident from record, both the parties were represented at the spot. In addition, Kanungo, Patwari and Naib Tehsildar were also present. Number of respectables of the village were also present. The Local Commissioner asked the revenue officials to produce "Musavi", on the basis of which demarcation/measurement was to be carried out. "Musavi" produced by the revenue officials was a photo copy, which was objected to by the respondent-plaintiff. He produced a certified copy of "Musavi" along with a photo copy thereof, which was perused by the revenue officials and also by the representative of the appellant and they raised no objection in case the measurement/demarcation is carried out on the basis of "Musavi" produced by the respondent-plaintiff. It has been specifically recorded in the report of the Local Commissioner that the revenue officials as well as representatives of both the parties did not dispute the fact that there was no pucca point available for

measurement/demarcation of the khasra number, on account of lot of construction carried out in the area. He proceeded on to record in his report that on the western side of the disputed area, i.e., Old Mugal Canal, there was very old wall of a Government building, which was admitted by both the parties to be reflected in "Musavi" at point "A". Resultantly, as admitted by all the parties, point "A" was fixed as reflected in "Musavi" produced by the respondent-plaintiff and the measurement was started. From point "D", which is an admitted partition between the Government property and private property and is duly reflected in "Musavi", point "E" was established while moving towards East from point "D" by covering the area as mentioned in "Musavi". Point "B" was established, while moving eastward, from point "A" after covering the area as mentioned in "Musavi" and point "C" was established while moving southward from point "B". Points "E", "B" and "C" were found to be the starting points of khasra No. 5848. It is so recorded in the report that the same were admitted by the parties. The area of khasra No. 5848 is from eastern side of the aforesaid points.

31. On the basis of the aforesaid demarcation, it was found that the respondent-plaintiff had encroached upon 116 square yards of land adjoining to his house, which is forming part of khasra No. 5848. At the spot, the respondent-plaintiff raised an objection stating that measurement having not been done from the western side of the disputed area, i.e., Old Mugal Canal, the same is not correct. He submitted that if the demarcation is done from eastern side, then the area encroached upon by him will not fall in khasra No. 5848. The Local Commissioner, to be fair to both the parties, started the exercise to carry out measurement from eastern side. Point "F" was found to have been marked in "Musavi", which the respondent-plaintiff admitted to be a wall constructed by HUDA. Again, as per the stand of the respondent-plaintiff, as noticed in the report of the Local Commissioner, if one moves towards north of point "F", point "G", as has been marked in "Musavi" is HUDA Gas Pipe. Even after carrying on demarcation/measurement, as guided by the respondent-plaintiff from the eastern side of his property, the Local Commissioner found that the position remains the same as was the result of measurement from western side, as again it reached at point "A", which was depicted in "Musavi" and from which measurement from western side was started.

32. The aforesaid measurement/demarcation by the Local Commissioner appointed by this court was done in the presence of both the parties, their counsels and also the revenue officials, namely, Naib Tehsildar, Kanungo and Patwari of the area concerned. It specifically records that whatever issues were sought to be raised by the parties and at whichever point both the parties were satisfied, the measurement was done. On the request of the respondent-plaintiff, the measurement was done even from eastern side, as firstly when it was done from the western side, it was found that the respondent-plaintiff had encroached upon khasra No. 5848, but the result of measurement even from eastern side, as requested by the

respondent-plaintiff, remained the same. The report is more authentic and reliable, as compared to the report produced by the Local Commissioner appointed by the learned trial court. It is also relevant that learned counsels for both the parties had consented for appointment of the Local Commissioner by this court, meaning thereby the report produced before the court below was doubted.

33. As against the report of the Local Commissioner appointed by this court, learned counsel for the respondent-plaintiff sought to place reliance on the report of Local Commissioner appointed by the trial court, which is quite sketchy, where the measurement was done only from one point. That admittedly was not a pucca point, hence, even that report cannot be said to be in terms of the instructions issued by the Financial Commissioner as contained in High Court Rules and Orders.

34. The objections have been raised by the respondent-plaintiff to the aforesaid report submitted by the Local Commissioner before this court primarily raising the issues that demarcation has not been done in terms of the instructions issued by the Financial Commissioner as contained in the High Court Rules and orders, the existence of a report already submitted by the Local Commissioner appointed by the trial court and to the very appointment of the Local Commissioner by this court. In my opinion, the objections raised by the respondent-plaintiff deserve to be rejected. As regards appointment of the Local Commissioner by this court despite the fact that there was already a report of the Local Commissioner appointed by the trial court on record is concerned, a perusal of the order passed by this court on 20.2.2003, as has been reproduced above, is a clear answer to the same. Though the objection is sought to be raised by the respondent-plaintiff that the appellant got the Local Commissioner appointed by concealing the facts, but it is otherwise. In the presence of counsels for both the parties, with their consent, the Local Commissioner was appointed by this court, hence, to raise any issue with reference to the same deserves to be rejected as the respondent-plaintiff cannot be permitted to blow hot and cold at the same breath, especially with the change in counsel representing the respondent.

35. As regards the instructions issued by the Financial Commissioner, as contained in High Court Rules and Orders are concerned, a perusal of the report of the Local Commissioner shows that the same is quite exhaustive. Copy of "Musavi" produced by the respondent-plaintiff was relied upon. Whichever points were fixed, as had been reflected in "Musavi", were with the consent of both the parties. The measurements were started thereafter. To permit the respondent-plaintiff to raise an issue regarding fixation of pucca points in the circumstances where lot of construction had been there in the area will not be justifiable. Certain parts of the report of the Local Commissioner showing admissions in the process of measurements by the respondent-plaintiff are extracted below:

That towards the western side of the disputed area i.e. Old Mugal Canal, there was a very old years wall, which was admitted by the parties to be reflected in the musavi

at Point "A". As both the parties had admitted that the above said Govt. wall was at Point "A" as mentioned in the musavi, the certified copy of which is annexed herewith as ANNEXURE A-12, the measurement/demarcation was started from the above said point.....

xx xx xx

Thus Point E, B and C, which were the starting points of khasra No. 5848 were established. It was the admitted case of the parties, as is apparent from the musavi that the area comprised towards the Eastern side of the point E, B and C was in khasra No. 5848.

xx xx xx

That an objection was raised by the respondent-plaintiff to the effect that the above mentioned area had fallen in khasra No. 5848, as the measurement/demarcation had been done from the western side of the disputed area i.e. Old Mugal Canal, but however, if the demarcation is done from the Eastern side of the Old Mugal Canal then the house of the respondent/plaintiff would not fall in khasra No. 5848.

36. From the report of the Local Commissioner appointed by this court, it is clearly established that the encroached area forms part of khasra No. 5848. It is undisputed that the same is in the ownership of the appellant. The respondent-plaintiff admittedly encroached upon 105 square yards of land, though as per report of the Local Commissioner appointed by this court, the same was found to be 116 square yards. The claim sought to be made by the respondent-plaintiff is that the encroached area falls within khasra No. 5471, which is owned by a private person, from whom he had purchased the plot in question. It is not in dispute that Randhir Colony was developed by a private person. The plot sold to the respondent-plaintiff shows a distinctive number in the colony and not that it is share in khasra No. 5471 or any other. Its boundaries have been clearly defined. The contention raised by learned counsel for the respondent-plaintiff that the private owner, who had developed the colony, left 105 or 116 square yards of land owned by him unplanned to be encroached by a person, who had been sold a plot at the boundary of the land owned by him, is too far fetched. A private coloniser at the time of development of the colony always plans for every inch of land owned by him. The respondent-plaintiff merely tried to create confusion as he himself is a practising lawyer. He did not produce any material on record to show as to how much area was owned by the coloniser from whom he had purchased the plot to establish that he had left some portion owned by him unplanned. The dimensions of the plot purchased by the respondent-plaintiff is evident of the fact that the same being at the end of the area owned by the vendor to the respondent-plaintiff, the size of the plot was quite odd and had different measurements on all four sides. It is evident of the fact that whatever land was left with the coloniser at the end was given a shape of plot and sold to the respondent-plaintiff.

37. The conduct of the respondent-plaintiff is evident of the fact that besides encroaching upon the land in excess of the area purchased by him, despite interim stay regarding alienation of the property in dispute, vide order dated 5.9.2001, he had sold the plot in question vide sale deed dated 28.3.2011, specifically mentioning that in addition to the plot owned by him, additional area of 110 square yards, which is in possession of the respondent-plaintiff is also being given to the vendees. Further, despite interim stay order regarding construction, the respondent-plaintiff still carried on the construction activities. It shows that the respondent-plaintiff being a practising lawyer is not a law abiding citizen by his conduct.

38. In view of the aforesaid discussion, in my opinion, the findings recorded by both the courts below are perverse. The area encroached upon by the respondent-plaintiff falls within khasra No. 5848, which is in ownership of the appellant. The respondent-plaintiff, who has no title or interest in the aforesaid admittedly encroached area, cannot be permitted to retain possession thereof. The substantial questions of law, as framed in the aforesaid appeal, are answered in favour of the appellant and against the respondent-plaintiff. Consequently, the appeal is allowed.

Findings in COCP Nos. 2048 of 2009 and 1049 of 2011

39. In COCP No. 2048 of 2009, the petitioner has raised the issue that the respondent-contemnor has violated the interim order passed by this court on 31.1.2006 in CM No. 565-C of 2006 in the appeal. Vide aforesaid order, the respondent was restrained from raising any construction over the suit property. Despite this fact, the respondent carried on construction on the suit property, as is evident from the photographs annexed with the contempt petition as Annexures P-7 to P-9. The same pertain to the year 2009 showing construction of a new boundary wall.

40. Learned counsel for the respondent submitted that the interim stay regarding construction was passed by this court on 31.1.2006. Thereafter, on 14.11.2006, the appeal was admitted. In the order, it is specifically mentioned that the interim stay granted by this court on 5.9.2001 shall continue, whereas the interim stay granted to the petitioner on 31.1.2006 was not directed to be continued. In view of the above, there is no violation of any order passed by this court, as there was no restraint order regarding construction after 14.11.2006.

41. In COCP No. 1049 of 2011, violation of the interim order dated 5.9.2001 restraining the respondent from alienating the suit property has been alleged. The aforesaid order was directed to be continued at the time of admission of the appeal on 14.11.2006. The case set up by the petitioner is that despite the aforesaid order, vide registered sale deed dated 28.3.2011, the respondent sold the property in question, hence violated the interim order.

42. In the aforesaid petition, despite the respondent having been served and represented by a counsel since 20.7.2011, no reply affidavit has been filed. Though at the time of hearing, learned counsel for the respondent sought to argue that the respondent is an old man suffering from many ailments. The factum of registration of sale deed in violation of the interim order passed by this court could not be disputed.

43. From the factual matrix, as noticed above in two contempt petitions, it is evident that the respondent/contemnor, who is a practising lawyer by profession, has no respect for law or the orders passed by this court. As far as COCP No. 2048 of 2009 is concerned, the fact that the respondent raised construction after passing of an interim order regarding stay of construction on 31.1.2006 is not in dispute. The text of the order passed is reproduced hereunder:

Notice of the application to Shri A.P. Manchanda, Advocate for the respondent for 4.4.2006.

In the meantime, the respondent is restrained from raising any construction over the suit property.

44. The plea sought to be raised is that at the time of admission of appeal, the interim order regarding stay of alienation only was directed to continue and not the interim order regarding stay of construction, hence, there is no violation. The fact remains that the respondent is not an illiterate person. He is legally educated. In case of doubt, he could very well seek clarification from the court before making an attempt to violate the order passed by this court, especially when the order restraining the respondent from raising any construction was passed in his presence and the same was not vacated. The aforesaid order was passed in civil miscellaneous application.

45. Still further, the conduct of the respondent is evident from even the subsequent violation of the interim order dated 5.9.2001 passed by this court regarding alienation of the suit property. The text of the order passed is reproduced hereunder:

Heard. The learned counsel for the appellant submits with the aid of site plan Ex. A. 3 that plaintiff-respondent Shri Ishwar Chander, has encroached upon the area forming part of khasra No. 5848, the ownership of which, earlier was of the State Government and subsequently, the ownership has been transferred to Improvement Trust. He supplemented his argument by stating that it has been mentioned even in the judgments of the Courts below that the plaintiff is in possession of an excess area measuring 105 square yards than the area which was purchased by him as per his sale deed.

Notice of motion for 13.12.2001.

Meanwhile, the plaintiff-respondent is restrained from alienating the property.

Dasti.

46. The aforesaid order was admittedly in knowledge of the respondent. Despite this fact, vide registered sale deed dated 28.3.2011, he sold the property in question to Satbir Singh, Lalit Mohan and Sham Sunder. It has also been mentioned in the aforesaid sale deed that in addition to the area, which is owned by the respondent-plaintiff, he is also handing over possession of 110 square yards of land, he is allegedly occupying for the last 50 years. In this contempt petition, the respondent has not even filed his reply affidavit. Meaning thereby, there is no denial to the fact that the interim order passed by this court has been violated.

47. Considering the aforesaid facts, in my opinion, the respondent has committed contempt of court of this court by not complying with the orders.

48. The respondent shall be heard on quantum of punishment on 2.8.2014.

49. A copy of the order be placed on the files of contempt petitions.