

**IN THE HIGH Court OF PUNJAB AND HARYANA AT ChainIGARH****118****RSA-1179-2021 (O&M)****Date of decision: 25.03.2025****Kamlesh Sharma (deceased) through LRs****...Appellant(s)****Vs.****Babita****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Chirag Wadhwa, Advocate for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff seeking permanent injunction restraining the defendant from interfering/dispossessing the plaintiff from the suit property as detailed in the plaint; and also from encroaching thereupon, has been dismissed with costs by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and respondent is the 'defendant'.

3. The case as pleaded by the plaintiff in the plaint is that the plaintiff is owner in possession of the plot measuring 260 Sq. Yds. by way of registered Sale Deed No. 5087/1 dated 01.09.2006 executed by Veer Karan Rajpal for a sale consideration of Rs.3,90,000/-. After registration of Sale Deed, mutation No. 21374 was sanctioned in favour of the plaintiff. Out of the said plot, the plaintiff sold 102.4 Sq. Yds. to one Arvind vide Sale deed



No. 4108/1 dated 13.08.2012. Out of the remaining land, the plaintiff further sold 56 Sq. Yds. to Monika wife of Vipin Kumar vide registered Sale Deed No. 8774/1 dated 10.01.2013. Thereafter, the plaintiff further sold 99.20 Sq. Yds. to Poonam Jangra wife of Sh. Rameshwar Dass vide registered Sale Deed No. 4522/1 dated 22.08.2012. Subsequently, the plaintiff filed Civil Suit No. 343 of 2015 for declaration against the above said Poonam Jangra in respect of the plot measuring 99.20 Sq. Yds, which suit was decreed in favour of the plaintiff vide judgment and decree dated 21.02.2015 passed by the Civil Judge (Junior Division), Karnal-cum-Presiding Officer. Thus, plaintiff was now the owner in possession of plot measuring 101.6 Sq. Yds. i.e. 93.6 Sq. Yds. + 8 Sq. Yds. as shown in the said site plan attached with the plaint. The disputed property in the present suit is 93.6 Sq. Yds. which is bounded as under:-

North: 28.2 ft., Plot of Others

South: 22 ft., and Street

East:37.6 ft. Property owned by Arvind and Monika.

West: 26", Plot of other owner

4. It is further averred that the plot measuring 260 Sq. Yds. which plaintiff had purchased from Veer Karan Rajpal vide Sale Deed No. 5087/1 dated 01.09.2006 is comprised in Khewat No. 3566 Khatoni No. 5947, total kittas 3, total area 25 bighas 6 biswas as per jamabandi for the year 1999-2000. While executing the above said Sale Deed, Veer Karan Rajpal had delivered possession of the said plot measuring 260 Sq. Yds. to the plaintiff, which fact is also mentioned in the Sale Deed No. 5087/1 dated 01.09.2006.



However, the defendant being strong headed, quarrelsome and influential lady wants to grab the suit property by hook or crook. On 30.05.2015, in order to fulfil her evil design, the defendant along with her associates came to the spot to encroach upon the suit property and tried to dispossess the plaintiff. The plaintiff requested her several times not to interfere in the peaceful possession over the suit property but to no avail. Hence, the present suit was filed by the plaintiff on 04.07.2015.

5. Upon notice, the defendant resisted the suit by filing written statement *inter alia* stating that the suit property with the boundaries as mentioned above is owned and possessed by the defendant No.1 with which no one including the plaintiff has any concern. It was pleaded that the property mentioned in the plaint does not fall in Khewat No. 3566 or Khatoni No.5947. In fact, the said property falls in Khasra No. 7652 and 7653 of Khewat No. 1929 of Kasba Karnal, now called as Karan Vihar Colony. The property of Khasra No. 7652 min and 7653 of Khewat No. 1929 was owned by Panpori, Parkasho daughters of Manbhari daughter of Shiv Lal to the extent of 1/2 share. After the death of Parkasho, her share was mutated in the name of her legal heirs Balkar Singh, Shiv Kumar, Angrejo, Sunita and Pinki and they vide Sale Deed No.2104/1 dated 13.6.2012 sold the said property measuring 0B-5B in favour of defendant no.1; and mutation No.36579 was also entered in favour of defendant No.1; and possession of the sold property was also delivered to defendant no.1 and since then answering defendant no.1 is in possession of the said property being owner. It was pleaded that the property with the boundaries and dimensions



mentioned in para no. 2 of the plaint, is in fact part of the above said property/plot owned and possessed by defendant No.1 which falls under Khasra No. 7652 & 7653 of Khewat No. 1929. The plaintiff is wrongly and legally claiming the said property to be her own property. The plaintiff is alleged to have purchased property in Khewat No. 3566, Khatoni no.5947 but she has not mentioned any Khasra no./killa no. in which the property exists, which proves that she is not sure about the property which she is alleged to have purchased.

6. It was further pleaded that the plaintiff belongs to group of land grabbers, who take forcible possession of the property of innocent persons such as the defendant, who then compromise the matter with the plaintiff and his group. In August 2012, the plaintiff had tried to take forcible possession of the property of defendant in respect of which defendant had registered FIR No. 501 dated 13.08.2012 under Sections 148, 149, 447, 511 and 506 IPC. Even Bhoop Singh, retired Kanungo had demarcated the property by visiting on spot. In report, Bhoop Singh had categorically mentioned that property in dispute falls in Khasra no.7652 & 7653, which falls in Khewat no. 1929 and not in Khewat No. 3566 as claimed by plaintiff. The said Bhoop Singh Kanungo was examined by the defendant in a complaint case titled as '*Babita Vs. Vipin*' as witness who deposed before the court regarding the said demarcation. It was pointed out that there is no mention of khasra No, killa No. in the alleged description of land without which demarcation of the revenue land is not possible.



7. Moreover, the defendant had raised construction upto 7-8 ft. over the property in dispute and also constructed a temporary shed. The electric meter was also installed by the UHBVNL in the name of the defendant. However, plaintiff side was interfering into peaceful possession of the suit property. On 05.06.2015, the plaintiff along with his group of land grabbers had trespassed upon the said property of the defendant and tried to take forcible and illegal possession of the same; and also caused grievous injuries to the defendant and her family. The matter was reported to the police and enquiry had been conducted in the same. Accordingly, dismissal of the suit was prayed for.

8. Replication was filed by the plaintiff in which averments made in the written statement were denied and those made in the plaint were reiterated.

9. From the pleadings of the parties, following issues were framed vide order dated 18.09.2015:-

- “1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.*
- 2. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.*
- 3. Whether the plaintiff has not come to the Court with clean hands and suppressed the true, correct and material facts from the Court?*
- 4. Whether present suit is an abuse of process of law?*
- 5. Relief.”*

10. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issue No. 1 against the plaintiff and issues



No. 2 to 4 in favour of the defendants; and accordingly, vide judgment and decree dated 07.09.2019, the learned trial Court dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was also dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 18.02.2020; thereby affirming the judgment and decree of the learned trial Court. Hence, the present second appeal.

11. Learned counsel for the appellant/plaintiff assails the concurrent judgments and decrees of the learned Courts below by submitting that in non-suiting the plaintiff, the learned Courts below have only relied upon the statement of Bhoop Singh Kanungo given in case FIR No 501 dated 13.8.2012 u/s Section 148, 149, 447, 511, 506 registered at the behest of the defendant against the plaintiff and other accused. However, the said FIR has been cancelled vide Cancellation Report (Ex-P-18) which shows the ill motive of the defendant to grab the suit property. This fact has also been ignored by the Ld Courts below. It is submitted that accordingly the findings of the learned Courts below declining grant of injunction in favour of the plaintiff is based upon misappreciation of evidence. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

12. No other argument is raised on behalf of the appellant/plaintiff.

13. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.



14. It is the case of the plaintiff that she was put in possession of the suit property as owner by way of Sale Deed No. 5087/1 dated 01.09.2006 Ex.P3 executed by Veer Karan Rajpal in favour of the plaintiff. However, it is not denied by the plaintiff that no khasra no. or killa no. has been mentioned in the said Sale deed dated 1.9.2006. Mutation and jamabandi on record are also with respect to Khewat no. 3566 Khatoni No. 5947. Admittedly, no khasra or killa no. has been mentioned by the plaintiff in which the suit property exists; and for demarcation of the property, it is the Khasra numbers/killla numbers of the property which are relevant and not the Khewat and Khatoni numbers which are subject to change on partition/fragmentation of the land. The onus was upon the plaintiff to relate the boundaries as mentioned in the Sale Deed No. 5087/1 dated 01.09.2006 with plot in dispute and prove the demarcation of the same. However, the plaintiff has only produced the Sale Deed (Ex.P3) - which admittedly does not mention the Khasra numbers/killla numbers of the property.

15. The record reveals that the plaintiff led no evidence to show that the sale Deed No. 5087/1 dated 01.09.2006 (Ex.P3) of land measuring 260 Sq. Yds. was with respect to plot in dispute. Site plan was prepared by PW3 Ram Kumar Draftsman, who had admitted in his cross-examination that the same was prepared on asking of the plaintiff. As such, the same does not help the cause of the plaintiff. Plaintiff has further relied upon the statement of Bhoop Singh, retired Kanungo. However, perusal of the said statement (Ex.D9) shows that Bhoop Singh had in fact, stated that the plot



in dispute falls in khasra No. 7652 and 7653. Thus, from the evidence of Bhoop Singh, it was clear that the plot in dispute falls in khasra No. 7652 and 7653; and plaintiff has been unable to prove that the plot purchased by the plaintiff vide Sale Deed No. 5087/1 dated 01.09.2006 pertains to khasra No. 7652 and 7653. Rather it is mentioned that the said plot falls in Khewat No. 3566 Khatoni No. 5947 and is part of total land measuring 25 bighas and 5 biswas. In respect of the revenue record, the plaintiff has not examined any revenue official and has not got conducted any demarcation report to prove her possession over the suit plot.

16. To the contrary, the defendant has produced voluminous documentary evidence in the form of jamabandi for the year 2014-15 (Ex.D1) with respect to khasra No. 7652 and 7653 which falls in Khewat No. 1988 and Khatoni No. 3159. The defendant had also placed on record the registered Sale Deed No. 2104/1 dated 13.06.2012 (Ex. D2); and the consequent mutation No. 36579 (Ex. D3) executed in her favour. The defendant had also produced copy of statement of Padam Kumar (Ex.D10) who had stated that in Khewat No. 1929 khasra No. 7652 and 7653 kittas 2 of total area of 1 Bigha 17 Biswas of share 5/39 which comes to 5 Biswas is owned by the defendant as per mutation No. 36579. The defendant had also produced certified copy of the statement of Bhoop Singh, retired Kanungo as Ex.D9. From the above evidence, the defendant was able to prove her possession over the suit land. Accordingly, learned Courts below did not grant injunction to the plaintiff.



17. Further contention of learned counsel for the plaintiff that the Sale Deed of the plaintiff being prior in time to that of the defendant would prevail, is irrelevant as the Sale Deed No. 5087/1 dated 01.09.2006 was with respect to land measuring 260 Sq. Yds which, as per the plaintiff falls in Khewat No. 3566 Khatoni No. 5947 and is part of land measuring 25 bigha and 5 biswas; whereas Sale Deed No. 2104/1 dated 13.06.2012 (Ex. D2) in favour of the defendant falls in khasra No. 7652 and 7653 measuring 0 bigha 5 biswas and pertains to Khewat No. 1929. Thus, both the Sale Deeds do not pertain to the same property.

18. Thus, learned trial Court correctly observed that it is settled law that Khewat and Khatoni number are changeable and change with the passage of time and upon the preparation of new jamabandi, but it is also settled law that khasra or killa number does not change and remains the same. The clear-cut report of Bhoop Singh and Padam Kumar clarified that the property in dispute falls in Khewat no. 1929, Khasra no. 7652 and 7653. The report of Bhoop Singh, Kanungo is crystal clear that the plot in dispute was demarcated by him which falls in Khasra No. 7652 and 7653. It is sufficient to show that the plaintiff is not in possession of the plot in dispute and Sale Deed dated 01.09.2006 (Ex.P3) does not pertain to the plot in dispute, and there is no evidence in favour of plaintiff to show that plot in dispute is the same as mentioned in Sale Deed no. 5087/1 dated 01.09.2006.

19. Moreover, the plaintiff had admittedly not got the suit property demarcated. As such, boundaries as mentioned by the plaintiff as got



recorded in the Sale Deed relied upon by the plaintiff did not corroborate her case. The plaintiff also cannot derive any benefit from the fact that the defendant had filed a Civil Suit dated 14.09.2012 (Ex.P15) against another person seeking possession of the suit property. The said argument of the plaintiff is liable to be rejected as it is settled position in law that the case of the plaintiff has to stand on her own leg and plaintiff cannot derive any benefit from the weakness in the case of the defendant. For grant of injunction, the plaintiff was required to independently show her possession over the plot in dispute.

20. It has also been submitted by learned counsel for the appellant that the dispute in the present case is with regard to identity of the property. However, no issue has been framed by the learned trial Court. I find no merit in the said argument of the appellant as the first issue framed by the learned trial Court to the effect that "*Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*" would cover the issue with regard to identity of the suit property.

21. It is also relevant to note the conduct of the plaintiff which is evident from the fact that it has been admitted by the plaintiff in her cross-examination that Poonam Jangra had moved a complaint against the plaintiff with regard to land sold by the plaintiff to her.

22. The relevant findings of the Id. trial Court are contained in para 26 and 27 of the judgment dated 07.09.2019, which read as under: -

"26. The defendant has also placed on record the electricity bills and other receipts to show the possession of the



defendant but as discussed above, this court has not to give any finding on the fact regarding title or the possession of the defendant. But simply to determine the fact whether the plot in question is in possession of plaintiff or not. As per the report Bhoop Singh and Halqa Patwari, it has been categorically found that the plot falls in Khasra no. 7652 and 7653 and sale deed of defendant no.1 pertains to share i.e. 0B-5B in Khasra no. 7652 and 7653 and mutation was entered in her favour but there is nowhere mentioned in sale deed no.5087/1 dated 01.09.2006 in favour of the plaintiff that the said plot measuring 260 Sq. Yards falls in Khasra no. 7652 and 7653 and jamabandi and mutation with respect to 260 Sq. Yards has been shown to be part of land measuring 25B-5B which is some different land and does not relate to plot in dispute of which, Sh. Bhoop Singh has given his report.

27. In view of the above discussion, the plaintiff fails to relate the property as mentioned in sale deed no.5087/1 dated 01.09.2006 and fails to produce on record demarcation report in her favour. So, she fails to show her possession over the suit property. Hence, plaintiff is not entitled to the relief of permanent injunction. Hence, issue no.1 is decided against the plaintiff and issues no.2 to 4 are decided in favour of the defendants.”

23. Learned counsel for the appellant is unable to dispute that mutation and jamabandi are in respect of Khewat No. 3566 Khatoni No. 5947 but no khasra no. or killa No. is mentioned in Sale Deed dated 01.09.2006 (Ex.P3) in favour of the plaintiff; or even in subsequent Sale Deeds executed by the plaintiff in favour of different persons.



24. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

25. Pending applications, if any, stand disposed of.

25.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No