



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-4325-2018 (O&M)
Reserved on : 19.08.2025
Pronounced on : 02.09.2025**

SUBAL (DECEASED) THR LRS AND ORS Appellants

VERSUS

UMED AND ORS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.C. Kinra, Advocate and
Ms. Apoorva Kinra, Advocate for the appellants.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellants challenging concurrent findings returned by both the Trial Court vide judgment and decree dated 12.05.2015 and the First Appellate Court vide judgment and decree dated 14.12.2017.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a simplicitor suit for permanent injunction for restraining the defendant-respondents from interfering into the peaceful cultivating possession of the plaintiff-appellants over the land being *Murtahan* and *Gair Marusi* and in any manner creating any hurdle in the cultivation of the land. It was averred in the plaint that the suit land as fully described in the plaint and measuring 30 Kanal 10 Marla as per *jamabandi* for the year 2005-06 situated within the revenue estate of Village Akbarpur, Tehsil and District Rohtak was under the cultivating possession of Bhola i.e. the predecessor-in-interest of the plaintiff-appellants as *Murtahan Nij Gair Marushi Min Janib*

Digar Murtahan since the last 60 years and his name was entered in the column of cultivation in the *fard jamabandi* for the year 1965-66 upto the last *jamabandi* for the year 2005-06. It was the further case that after the death of Bhola, the plaintiff-appellants had inherited the rights and since then they have been in cultivating possession of the suit land. It was further averred that the plaintiff-appellants were paying *Nehri Abiyana* for irrigating the said land.

3. On notice the defendant-respondents No.1, 2 and 4 to 7 filed their joint written statement raising various preliminary objections qua maintainability etc. On merits it was stated that the land measuring 30 Kanal 10 Marla was earlier mortgaged with Lajje Ram son of Sh. Udmi Jat along with the possessory rights. Possession of the suit land was transferred in favour of Sh. Desram son of Sh. Sadaram and Sh. Sultan son of Sh. Raja son of Sh. Sadaram in equal shares vide mutation No.2519 dated 07.04.1938 for a sum of ₹800 (rupees eight hundred). During the course of the past years, the suit land was in joint possession of the mortgagees and their legal heirs. It was further the case that the plaintiff-appellants have mortgagee rights to the extent of 1/6th share in the land through their ancestor Sh. Bhola son of Desram. It was further the case that the defendant-respondent No.3 also had mortgagee rights to the extent of 1/6th share in the suit land through his ancestor Bajje son of Desram. However, the remaining defendant-respondents had become owners of the remaining share of the suit land vide gift deed No.11090 dated 02.02.2012. The *fard jamabandi* for the years 1941-42 and 2005-06 clearly show that all the mortgagees are in joint cultivating possession of the suit land. It was further the case that the ownership rights had also been mutated in favour of the answering defendant-respondents vide

mutation No.8189 dated 03.02.2012. It was further the case that Bhola had only 1/6th share of mortgagee rights in the suit property and was in cultivating possession of only his share. The plaintiff-appellants have only mortgagee rights over the suit land however the defendant-respondents have ownership rights after the execution of the gift deed in their favour. None appeared on behalf of defendant-respondent No.3 who was proceeded against *ex parte*.

4. Replication was not filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
3. Whether the plaintiffs have concealed the true and material facts from this Court, if so its effect ? OPD
4. Whether the plaintiffs have no cause of action and *locus standi* to file the present suit ? OPD
5. Relief.

5. The Trial Court vide judgment and decree dated 12.05.2015 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellants before the First Appellate Court which appeal was also dismissed vide judgment and decree dated 14.12.2017. Hence, the present regular second appeal by the plaintiff-appellants.

6. The learned counsel for the plaintiff-appellants had contended that both the Courts have erred in dismissing the suit. It is urged that from the year 1965-66 to the year 2005-06, the jamabandis had all been produced and

the ancestors (predecessors-in-interest) of the plaintiff-appellants were reflected as *Murtahan Nij Gair Marushi Min Janib Digar Murtahan* in all the revenue records. It was further the contention of the learned counsel that Bhola was in possession in his own capacity as well as that of other mortgagees. It was still further the contention that the revenue entries as reflected in various *Khasra Girdwaris* had been ignored by both the Courts.

7. I have heard the learned counsel for the plaintiff-appellants.

8. In the present case the averment made by the plaintiff-appellants in the plaint was that they have a right over the suit property having inherited the same from their predecessor-in-interest – Bhola. The *jamabandi* for the year 1965-66 (Ex.P1) shows Bhola as one of the mortgagees over the suit land. Bhola had been reflected as in joint possession of the suit property as per his share. The said entries carried on till the year 2005-06. However, as per the *jamabandi* for the year 2005-06 (Ex.P9) Bhola is shown as a mortgagee and in possession of the suit land on behalf of the other mortgagees. The Courts found that though the said revenue entries were continuing for the years more than 30 years, however, the change in the entry for the year 2005-06 remained unexplained. It was an isolated entry regarding the possession of Bhola on behalf of all the mortgagees. The learned counsel for the plaintiff-appellants had been unable to explain the sudden change and the isolated revenue entry in the *jamabandi* for the year 2005-06. Further still, the Courts found that the plaintiff-appellants have not placed on record any document that they had become *Gair Marusi* on behalf of Bhola. The plaintiff-appellant – Subal – who appeared in the witness box as PW1 stated in his cross-examination that both the parties belonged to the same family of Sadaram. He stated that he did

not know whether he had filed any affidavit in Court. He did not even understand the language of the affidavit. He further stated that he did not know what was written in the affidavit. He also stated that he did not know as to what was Bhola's share. In the absence of any evidence on the record to show that the plaintiff-appellants were in exclusive possession of the suit property, no fault can be found with the impugned judgments and decrees passed by both the Courts concerned. No other point was argued.

9. No question of law, much less any substantial question of law, arises for determination by this Court in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

02.09.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No