

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****113****RSA-2205-2022 (O&M)****Date of decision: 24.01.2025****Sukhdev Singh****...Appellant(s)****Vs.****Dhan Dhan Bapu Kumbh Dass Ji & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.R.P. Dhir, Advocate  
for the appellant.

Mr. Divanshu Jain, Advocate with  
Mr. Minkal Rawal, Advocate  
Mr. Abhinav Goel, Advocate  
Mr. Arjun Sangwan, Advocate  
for the respondent.

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**NIDHI GUPTA, J.**

The defendant No.1 is in second appeal before this Court against the concurrent findings of the learned Courts below whereby the suit of the plaintiffs/respondents No.1 and 2 herein, for permanent injunction restraining the appellant/defendant No.1 from illegally and forcibly: a) causing any obstructions in functioning of Management Committee of Respondent; b) Interfering into the lawful and peaceful and exclusive possession of plaintiff in the property marked as ABCD shown as 'red' in colour in the site plan attached with the plaint, measuring 14 Marlas bearing Khata No. 154/222, Khasra No. 18/16/4(0-14), village Garhi, Tehsil Garhshankar (hereinafter 'The Suit Property'); c) demolishing the existing constructions existing over the suit property, has been decreed.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant as 'the defendant no.1' and the respondents as 'the plaintiffs'.

3. The brief facts of the case as put forth in the plaint are that the plaintiff No.1 is a juristic person being the registered Management Committee managing the affairs of plaintiff No.1. Surinder Pal Verma is the President and Paramjit is the Vice President of the said Committee. Vide resolution dated 11.10.2009 passed by the Management Committee, the President and Vice President were authorized to file the suit on behalf of plaintiff No.1. It was the pleaded case of the plaintiffs that the plaintiffs are in exclusive possession as owners/co-sharers in land measuring 0-14 marlas and marked as ABCD shown in red colour in the site plan measuring 14 marlas bearing Khata No.154/222, Khasra Nos.18//16/4 (0-14) as per Jamabandi for the year 2006-07 situated in the area of village Garhi, Tehsil Garhshankar/ the suit property. On the suit property, there are two rooms kutia and submersible pump constructed and installed by followers of plaintiff No.1. Religious pooja place (dhoona) is also in existence since the time of Bapu Kumbh Dass Ji. It was further pleaded that the defendant No.1 is co-sharer in the land of joint Khata whereas defendants No.2 to 4 are strangers and they have no right title or interest in the suit property. Further averment was made in the plaint that for the last about one week, the defendants in connivance with each other were threatening the plaintiffs through members of the Committee that they will forcibly



interfere into the lawful, peaceful and exclusive possession of the plaintiffs. The defendants threatened that they will demolish the existing constructions and submersible pump and the Dhoona illegally and forcibly. The said threats of the defendants are wrong, illegal and against law and facts; and the plaintiffs will suffer irreparable loss and injury in case the defendants succeed. The defendants were asked many times to refrain from their activities, however, to no avail. With these averments, the suit was filed.

4. Upon notice, the defendants appeared and filed their written statement contesting the suit denying the averments made in the plaint inter alia stating that the plaintiffs have no cause of action to file the present suit; the plaintiffs had not come to the Court with clean hands; that under the garb of present suit, plaintiffs want to encroach upon the common property; plaintiffs had not joined the Gram Panchayat as party; and the plaintiffs should be directed to produce exact measurement of the site in dispute; the Dhoona shown by the plaintiffs in their site plan and the construction clearly falls within the western rasta which is depicted in the site plan of the defendants which has been prepared at the spot strictly as per revenue record with the measurement; and in case the version of the plaintiffs is admitted then the rasta would be blocked; that the submersible pump also falls within the northern kacha rasta; and therefore, the defendants have every right to block the illegal move of the plaintiffs who cannot be allowed to encroach upon the public passage.



5. On the basis of pleading of the parties, following issues were framed:-

*“1. Whether the plaintiff no.1 is co-owner in exclusive possession of the suit site as detailed and described in head note of the plaint and shown in the attached site plan? OPP*

*2. Whether the site plan filed by the plaintiff is correct? OPP*

*3. Whether plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP*

*4. Whether plaintiffs have not come to the court with clean hands and under the garb of the present suit, they are trying to encroach upon the passage as depicted in the Aks Shajra and in the other revenue record? OPD*

*5. Whether the Gram Panchayat of Village Garhi Matton is necessary and proper party and therefore, the suit is bad for misjoinder? OPD*

*6. Relief.”*

6. Upon consideration of the entire oral and documentary evidence brought on record by the parties, the learned trial Court decreed the suit in favour of the plaintiffs. Defendants No.1 and 2 went in appeal before the learned Additional District Judge, Hoshiarpur which was dismissed vide judgment and decree dated 06.08.2022. Hence, present second appeal by defendant No.1.

7. Learned counsel for the appellant/defendant No.1 submits that the suit of the respondents/plaintiffs has been decreed on the basis of report dated 01.01.2011 of the Local Commissioner appointed by Court. It is submitted that even as per the said report (Ex.P1) it is shown that the illegal construction/Dhoona raised by the plaintiffs



falls in Khasra No.18//16/4 and “*half share falls in khasra No.18//16/6 in the passage*”. It is submitted that therefore, in view of this proven/admitted fact it becomes clear, that the plaintiffs have encroached upon public land i.e. the passage; and thus, the suit of the plaintiffs could not have been decreed.

8. It is submitted that as per the report of the Local Commissioner himself the encroachment being done by the plaintiffs is proved. The said report could not have been discarded merely on the basis of an unreliable site plan produced by the plaintiffs. Plaintiffs have not filed any objections to the said report and in fact PW1 has admitted the correctness of the report. The version of the plaintiffs in the plaint and the site plan is that the Dhoona exists only in Khasra No.18//16/4. However, the report is to the contrary and the correct fact has not been brought by the plaintiffs before the Courts. Learned counsel submits that the pleas of the plaintiffs are inconsistent with the suit version, thereby falsifying their own pleas.

9. The plaintiff initially in his pleading explained the position as to khasra No.18//16/4 being only comprising of room, submersible pump and dhuni. However, during course of trial, at the time of rebuttal, the plaintiff again examined himself in rebuttal alleging that there was also a rasta left out back in the year 2008 in the aforesaid khasra number, which is neither originally pleaded nor shown in the site plan as produced. It does not lie in the mouth of plaintiff to assert



different actual and factual position in plaint and different actual and factual position at the time of rebuttal, thereby making his version inconsistent. It is accordingly prayed that the impugned judgments and decrees of the learned Courts below be set aside.

10. Per contra, learned counsel for the plaintiffs appearing on caveat vehemently opposes the submissions made on behalf of the appellant/defendant No.1 and submits that the defendant No.1 has no locus to illegally threaten the plaintiffs. In fact the defendant No.1 himself has admitted before the learned Courts below that the plaintiffs are the owners of the suit property; that construction of the plaintiffs exists on the suit property; that the plaintiffs are in exclusive possession of the suit property; and that the electric connection thereupon is in the name of the plaintiffs. It is submitted that in view of these admissions the defendant No.1 is a stranger to the suit property and having no right, title and interest thereupon to illegally threaten the plaintiffs.

11. It is submitted that even assuming that the plaintiffs are encroachers or have raised illegal construction or have raised construction beyond the suit property, the plaintiffs cannot be dispossessed except "*in due course of law*". It is argued that even assuming there is any encroachment by the plaintiffs, then it is for the concerned Municipal Corporation to take action against the plaintiffs, if any. It is submitted that how can the defendant No.1 take action or break the plaintiffs' structures on his own. In support of his contentions, learned



counsel relies upon judgments of this Court in **“Ravi Chopra Vs. Shri Jajpal Mahendru”** Law Finder Doc ID # 50486; **“Kala Singh & Others Vs. Mukesh Kumar”** Law Finder Doc ID # 635390; **“Jagga Ram Vs. Rattan Lal & Others”** Law Finder Doc ID # 1468149; **“Tara Chand & Others Vs. Siri Pal & Others”** Law Finder Doc ID # 1464727; **“Bachan Singh Vs. Swaran Singh”** Law Finder Doc ID # 18843; **“Siri Kishan Vs. Dharampal & Others”** Law Finder Doc ID # 122401; **“Nahar Singh & Others Vs. Kaka Singh”** Law Finder Doc ID # 18928; and judgment of Hon’ble Supreme Court in **“Walter Louis Franklin (dead) through LRs Vs. George Singh (dead) through LRs”** Law Finder Doc ID # 35314.

12. No other argument is raised on behalf of the parties.

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

14. At the very outset it may be pointed out that the present appeal is of the year 2022 and the same has been adjourned at request of learned counsel for the appellant/defendant No.1 on 28.10.2022, 16.12.2022, 18.04.2023, 02.08.2023, 16.11.2023, 09.02.2024, 12.07.2024, 02.08.2024 and 28.11.2024.

15. Before proceeding to deal with the argument raised by the appellant/defendant no.1, it may be pointed out that the ownership and possession of the plaintiff over the suit property is irrefutably established on record by way of overwhelming evidence. This fact has been admitted by the defendants themselves in their evidence before the



learned trial court. Perusal of Jamabandi for 2006-07 shows that the Khata No. 154/22 is jointly owned by co-sharers including Defendant no.1, yet only Plaintiffs are shown to be in exclusive possession of disputed property. Further, the Defendants admitted the construction of Plaintiff over the suit property; DW1 Sukhdev Singh admits in cross-examination that the Dhoona is present at the disputed property; DW1 further admits that Bapu Kumbh Dass is the owner of the disputed property; Also, admits that the mutation sanctioned in favour of Plaintiff in Jamabandi for 2006-07 pertaining to disputed property is correct; DW1 again admits in cross-examination that the Plaintiff purchased the disputed property and that the Plaintiff is a registered society. Even DW2 Dhani Ram admits that the disputed property was purchased by Bapu Kumbh Dass. Further PW4 Kashmiri Lal proved on record Ex. PW4/A the Electricity Bill regarding the suit property in the name of Surinder Pal Verma, President of Society Baba Kumbh Dass. No doubt, Defendant no.1 is a co-sharer in the joint Khata but that would not vest any right in the Defendants to interfere in the peaceful possession of Plaintiff over the suit property. Thus, the Ld. Trial Court rightly decreed the suit on 14.10.2016 on the basis of the above evidences restraining the Defendants from illegally and forcefully interfering in functioning of Plaintiff Committee, dispossessing the Plaintiff from suit property or demolishing construction of Plaintiff, except in due course of law.



16. The main crux of the arguments advanced on behalf of the defendant No.1 is that the plaintiffs had filed the present suit seeking permanent injunction only with regard to the suit property existing in Khasra Nos.18//16/4 (0-14); however, as per the report of Local Commissioner (Ex.P1) it has been informed that the half share of the construction raised by plaintiffs/Dhoona falls in “Khasra No.18//16/6 in the passage”. It has been contended that thus, the encroachment on part of the plaintiffs is proven.

17. At first blush, the said argument of the appellant appears to be appealing however, upon a detailed perusal of the record the same is borne out to be incorrect. Firstly, as per the report of Local Commissioner (Annexure P1) half portion of Dhoona is in Khasra no. 18//16/4 and remaining half is in Khasra 18//16/6 which is passage owned by Gram Panchayat (and not by Defendant against whom injunction is sought). Further, the Plaintiff has brought on record resolution dated 06.11.2008 (Ex. PA) whereby two Karam wide land was given by Darshan Kaur to Plaintiff for the purpose of passage.

18. In regard to the above facts, I refer to the findings as recorded by the learned Lower Appellate Court in paras 15 and 18 of the impugned judgment and decree dated 06.08.2022 which reads as follows:

*“15. I have gone through the record. PW-1 Surinder Pal Verma, President of Plaintiff No.1 society made statement proving averments of the plaint. His this version find corroboration from the oral testimony of PW-2 Dhani Ram*



and PW-3 Lakha Singh who are followers of the plaintiff No. 1. The plaintiffs further brought on record copy of resolution dated 11.10.2009 Ex.P1 whereby plaintiff No.1 Society has authorized its President Surinder Pal Verma and Vice President Paramjit to institute and prosecute this suit. Ex.P2 is site plan of the suit property as shown red in colour which is in possession of the plaintiffs. Ex. P3 is copy of jamabandi for the year 2006-07 of land measuring 26 kanals 7 marlas showing that plaintiffs No.1 and 2 and defendant No.1 are co-sharers in joint khata bearing No. 154/220. However, plaintiffs No. 1 and 2 are recorded in exclusive possession of Khasra No.18//16/4(0-14) i.e. the suit property. The plaintiff also brought on record copy of resolution dated 06.11.2008 Ex. PA whereby two karam wide land was given by Darshan Kaur to plaintiff for the purpose of passage.

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18. DW-1 Sukhdev Singh stated in his cross examination that Bapu Kumbh Dass Ji is owner of the suit property; the total land is 26 kanals 7 marlas wherein plaintiffs are recorded as co-sharers; except plaintiff No. 1 there is no other committee to run the institution out of above said khasra number, land measuring 14 marlas is in possession of the plaintiff; towards eastern side of the Bohli there is a submersible pump and electricity connection has been got installed by the plaintiff society. So, from this statement of DW-1 Sukhdev Singh, defendant No. 1 also it is clear that the plaintiffs are in settled exclusive possession over the suit property being co-sharers. The plaintiffs also brought on record bill/ledger Ex.PW4/A regarding installation of electricity connection in the suit property, which has been proved by DW-1. As the plaintiffs are in settled exclusive possession of the suit property being



*co-sharers, they are entitled to protect their possession against illegal and forcible dispossession. Although, defendant No. 1 is a co-sharer in the joint khewat, but, he has no right to interfere in exclusive settled possession of the plaintiffs over the suit property, illegally and forcibly except in due course of law. The remedy available with them is to seek partition of the suit joint land. So far as report Ex. D1 of the Local Commissioner is concerned, the same is of no avail to the defendants because it is not the case of removal of encroachment. Through this suit the plaintiffs have sought simple relief of injunction against illegal and forcible dispossession except in due course of law. Therefore, the learned lower court has rightly held that the plaintiffs are entitled to injunction as prayed for. Thus. no ground is made out to interfere in the findings returned by the learned lower court on the above said issues and the same are affirmed and upheld.”*

(Emphasis added)

19. From the above it is clear that as per the Resolution dated 06.11.2008 (Ex.PA) even the passage land was gifted to the plaintiffs by Darshan Kaur. As such, strictly speaking, it cannot be said that there is any ‘encroachment’ by the plaintiffs. Even otherwise, as has correctly been observed by the learned Additional District Judge Hoshiarpur that as far as the report of the Local Commissioner is concerned, the same is not relevant as the present case is not of removal of encroachment rather an injunction is being sought against the illegal and forcible dispossession of the defendants “*except in due course of law*”.



20. Furthermore, I find merit in the argument advanced on behalf of the plaintiffs that even assuming, there is any 'encroachment' by them, even then the defendants have no locus to interfere in the peaceful possession of the plaintiffs over the suit property. The decree passed in favour of the plaintiffs only restrains the defendants from/ directs that: *"It is therefore ordered that the suit of the plaintiff is hereby decreed to the effect that defendants are restrained themselves or through anybody else from causing any sort of obstructions in the functions of the Management Committee of the plaintiff no.1 and from interfering into the lawful and peaceful and exclusive possession of plaintiffs in the property marked as ABCD shown red in colour in the site plan measuring 14 marlas bearing Khata no.154/222, Khasra nos. 18//16/4 (0-14) as per jamabandi for the year 2006-07 situated in the area of Village Garhi, Tehsil Garhshankar and from demolishing the existing constructions etc. illegally and forcibly except in due course of law and defendants be restrained from doing so in future."*

21. Thus, the decree passed against the defendants and in favour of the plaintiffs is for restraining the defendants from causing any sort of obstruction in the functions of the Management Committee of plaintiff No.1; and from interfering in the lawful, peaceful and exclusive possession and from demolishing the existing constructions. I find merit in the submissions made on behalf of the plaintiff that even if it is assumed for the sake of argument that an encroachment exists upon and beyond



the suit property, the defendants have no authority to take the law in their hands and seek to demolish the said allegedly illegal construction on their own. It is for the concerned Municipal Corporation to take action, if required, in accordance with law. It has been forcefully pointed out by learned counsel for the plaintiffs that the plaintiffs cannot be dispossessed, or existing constructions be demolished or obstructions caused in the functioning of the plaintiffs *“except in due course of law”*. This is especially so as admittedly, the defendant No.1 has no right, title or interest in the suit property. What more, as noted above the defendant No.1 in his testimony as DW1 has himself admitted that the land measuring 14 marlas is in possession of plaintiffs; that the plaintiffs are in settled exclusive possession over suit property be co-sharers; and that therefore they are entitled to protect their possession against illegal and forcible dispossession. Even the ledger in respect of the electricity connection installed by the plaintiffs on the suit property (Ex.PW4/A) was duly proved by DW1/appellant/defendant No.1. No doubt the defendant No.1 is a co-sharer in the joint khewat but that would not give him the right to interfere in the admitted exclusive settled possession of the plaintiffs of the suit property illegally and forcibly *“except in due course of law”*.

22. In holding as above, I find support from a three-Judge Bench judgment of the Hon’ble Supreme Court rendered in case of **“Rame**



**Gowda (D) by Lrs. Vs. Mr. Varadappa Naidu (D) by Lrs. & Another” Law Finder Doc ID # 65812**, wherein it has been held that:-

*“B. Specific Relief Act, 1963, Section 36 - Question of title - Trespasser - Injunction against true owner and in favour of trespasser in settled possession - It is not necessary for the person claiming injunction to prove his title to the suit land - He is required only to prove his lawful long possession without any concealment to the true owner and that his possession was invaded or threatened - Question of title remains and have to be kept open to be adjudicated in a regular suit.”*

23. Another three-Judge Bench of the Hon’ble Supreme Court in **“A. Subramanian & Another Vs. R. Pannerselvam” Law Finder Doc ID # 1805417**, held as under:-

*“Permanent injunction - Even trespasser in established possession of property can obtain injunction.  
Permanent injunction - Suit for permanent injunction can be filed without seeking a prayer for declaration.  
Specific Relief Act, 1963 Sections 6 and 38 Decree of suit for Permanent injunction restraining defendant from disturbing peaceful possession and enjoyment of plaintiff over suit property - Appeal by defendants - Plea of defendants that plaintiff claimed right to suit property on basis of sale deed which is invalid as not executed by proper power of attorney by heirs of 'D' - Held, even trespasser, who is in established possession of property can obtain injunction - High Court rightly observed that plaint shows that plaintiff not narrated anything about title dispute obviously because of fact that in*



*previous litigation, defendant failed to obtain any relief - High court rightly observed that principle that plaintiff cannot seek for bare permanent injunction without seeking a prayer for declaration improper and not applicable - Therefore, decree of permanent injunction upheld.”*

24. This Court in **“Smt. Geeta and Another Vs. Ashok Kumar” Law Finder Doc ID # 68017**, has held that:-

*“Civil Procedure Code, 1908, Order 39, Rules 1 and 2 - Indian Easements Act, 1882, Section 63 - Scope and applicability - Even trespasser having established possession of property cannot be dispossessed forcibly by true owner - True owner can recover possession only by due process of law even from unauthorised occupant - Entitled to issue of ad interim injunction restraining defendant from interfering with their possession - Held, ad interim injunction granted only to the effect plaintiffs not to be dispossessed from land in dispute except in due course of law.”*

25. In face of the above noted factual and legal position, the Id. Courts below correctly held that as the Plaintiffs are recorded in exclusive possession of suit property as per the revenue records, that is, Jamabandi for the year 2006-07; and DW1 has admitted in cross-examination that Bapu Kumbh Dass is owner of suit property and the land measuring 14 Marlas is in possession of the Plaintiff; and that Plaintiffs are in settled exclusive possession of suit property being co-sharers and they are entitled to protect their possession against illegal and forcible dispossession; thus, the remedy available with Defendant is to seek partition of the joint suit land. The report of Local Commissioner is not



relevant as the case is not of removal of encroachment rather injunction against illegal and forcible dispossession by Defendants. Ld. Appellate Court dismissed the Appeal vide Judgment and decree dated 06.08.2022 and consequently restrained the Appellant from illegally and forcefully interfering in functioning of Plaintiff Committee, dispossessing the Plaintiff from suit property or demolishing construction of Plaintiff, except in due course of law.

26. I find no ground is made out to interfere in the well-reasoned judgments and decrees of the Id. Courts below. In view of the above, present appeal is **dismissed**.

27. Pending application(s) if any also stand(s) disposed of.

**24.01.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

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