



(208)

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

RSA-5658-2015 (O&M)

Date of Decision- 05th September, 2025

Gurdarshan Lal

...Appellant(s)

Versus

Punjab State through the Secretary Rehabilitation Department,
Punjab, Chandigarh and another.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Ms. Ekta Thakur, Advocate,
Ms. Shikha, Advocate,
for the appellant.

Mr. Iqbaljit Singh Kingra, Senior Deputy Advocate General, Punjab.

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VIRINDER AGGARWAL, J.

1. Vide this Regular Second Appeal, the judgement and decree dated 30.11.2013 passed by learned Civil Judge, Junior Division, Hoshiarpur as well as judgement and decree dated 07.09.2015 passed by learned Additional District Judge, Hoshiarpur in suit filed by appellant-plaintiff for grant of permanent injunction have been assailed.
2. The appellant-plaintiff filed suit for permanent injunction claiming that before independence Ram Rakha, grand-father of the appellant, was in possession of the land as tenant on payment of fruit and timber of the trees to a Muslim owner and after independence on creation of Pakistan the ownership of the suit land vested in the government, but Ram Rakha remained in possession in that very capacity. Ram Rakha expired on 04.02.1964. After his death, Ram Chand, father of the appellant-plaintiff, came into possession who died on

26.10.1967. Thereafter, the appellant-plaintiff continued in possession on the same terms and conditions. The appellant-plaintiff has constructed a house in Khasra No. 40 measuring 02 kanals 16 marlas. The appellant-plaintiff is part time living in Phagwara and mostly in the suit property. The defendants are out to dispossess the appellant-plaintiff from the suit land. The plaintiff moved an application before Naib Tehsildar, Bhunga for correcting Khasra Girdawari entries in his name, but to no avail. A false criminal case was got registered against the plaintiff for commission of offence punishable under Section 447 of the Indian Penal Code and Section 30(c) of the Indian Forest Act, 1927. The plaintiff was acquitted vide judgement dated 22.05.2003. Earlier also the plaintiff filed suit against the defendants, but due to involvement of attorney of the plaintiff in criminal case, the same could not be pursued and was dismissed on 27.09.1999. Hence, the suit.

3. On notice, defendants filed joint written statement raising preliminary objection of maintainability, the plaintiff not approaching the Court with clean hands, estoppel and attorney not being authorized to file the present suit and the suit being barred in view of dismissal of previous suit and on merits the defendants denied that Ram Rakha ever came into possession or after his death Ram Chand or the plaintiff ever came into possession of the suit property. It is further denied that the plaintiff is tethering cattle in the suit property or that Mehar Singh has been appointed as lawful attorney of the plaintiff and specifically alleged that Forest Department is in possession of the suit property on behalf of provincial government. Possession of the suit property was taken by the Forest Department as per law by order of Deputy Commissioner, Hoshiarpur vide No. 113 of 11.01.1999. Rapat No. 335 of

18.03.1999 was entered in the Daily Diary by Halqa Patwari. It was denied that the plaintiff has constructed house in the suit property.

4. The plaintiff filed replication denying the averments of the written statement and reiterating the contents of the plaint and further alleged that Rapat Roznamcha and Mutation are fabricated documents prepared in connivance with the Revenue Department.

5. From the pleadings, the following issues were framed:-

I. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

II. Whether the suit is not maintainable? OPD

III. Whether the plaintiff has not approached the Court with clean hands? OPD

IV. Whether the plaintiff is estopped from his act and conduct to file the present suit? OPD

V. Whether the suit has not been filed through a proper person? OPD

VI. Relief.”

6. In order to prove the issues, the plaintiff examined Nirmal Singh (PW1), himself appeared as PW2, Karam Singh (PW3), Arjan Khanna (PW4) and tendered into evidence death certificate of Ram Rakha (Exhibit P1), site plan (Exhibit P2), mutation (Exhibit P3), copy of judgement dated 22.05.2003 (Exhibit P4), photographs (Exhibits P5 to P9), Khasra Girdawari (Exhibit P10), mutation entries (Exhibits P11 to P16), death certificate of Ram Rakha (Exhibit P17) and Gazette Notification dated 20.02.1970 (Mark-A).

7. The defendants examined Ashok Kumar Kalia (DW1) and tendered into evidence Khasra Girdawari (Exhibit D1), Jamabandi for the year 2006-2007 (Exhibit D2), photocopy of Roznamcha of the year 1998-1999 (Exhibit D3), Khasra Girdawari (Exhibit D4), notification of the Forest

Department showing he is in possession of the suit land (Exhibit D5) and Jamabandi for the year 2011-2012 (Exhibit D6).

8. After hearing arguments, learned Civil Judge dismissed the suit.

9. The appellant-plaintiff preferred first Appeal in the Court of learned Additional District Judge, Hoshiarpur. The same was dismissed by learned Additional District Judge, Hoshiarpur.

10. Aggrieved by the judgement and decree so passed by the learned first Appellate Court, the present appeal has been filed.

11. Notice of motion was issued to the State of Punjab and the Forest Department.

12. Lower Court Record was requisitioned.

13. I have heard arguments and gone through the file carefully.

14. Learned counsel for the appellant contended that both the Courts below have committed illegality by not taking into consideration the copies of Jamabandi and Khasra Girdawari placed on record by the plaintiff which are Exhibits P9 to P16 and in all these documents name of Ram Rakha, grandfather of the plaintiff, appears as cultivator and presumption of truth is attached to the entries of Jamabandi as per Section 44 of the Punjab Land Revenue Act, 1887. He further contended that the learned Courts below have erred in discarding the case of the appellant-plaintiff on the basis of order of the Deputy Commissioner dated 11.01.1999 and entry in the Daily Diary of Halqa Patwari bearing No. 335 of 18.03.1999 on the basis of which Khasra Girdawari was changed in the name of Forest Department. There is nothing on record that the Forest Department ever came into possession over the suit property or the plaintiff was dispossessed from the property. DW1 has admitted in his cross-examination that Ram Rakha was in possession over the suit property and that

possession of the suit land was never taken from Ram Rakha or the plaintiff through any Court of law. He feigned ignorance with regard to date or month when the possession of the suit land was taken by the respondents-defendants from the plaintiff. He further contended that both the Courts below committed illegality by recording a finding that suit of the plaintiff is barred by *res-judicata* as there is nothing on record to prove the pleadings of the previous suit or that the previous suit was decided on merits between the parties with regard to the matter directly and substantially in issue in the present suit. So, the appeal be allowed and judgements and decrees be set aside.

15. On the other hand, learned State counsel contended that it is the case of the appellant-plaintiff that the name of Ram Rakha as cultivator of the suit land appeared in documents Exhibits P9 to P16, whereas the appellant has himself pleaded that Ram Rakha expired on 04.02.1964. So, these documents are proved to be wrong in view of admission of the plaintiff in the plaint itself that the entries in the revenue record were in the name of a dead person who has died long ago. When such is the situation, no presumption can be attached to these entries and in the latest revenue record entries, Forest Department is recorded as owner of the suit property and both the Courts below have rightly concluded that the plaintiff has failed to prove his possession. So, the appeal of the appellant be dismissed.

16. I have gone through the record carefully and considered the submissions made by learned counsel for the respondents, but find the same to be devoid of merit.

17. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not

under Section 100 CPC. Reference in this regard can be made to the judgement of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others Vs Chandrika and others* (2016) 6 SCC 157 followed by the judgements in the case of *Kirodi (since deceased) through his LR Vs Ram Parkash and others* (2019) 11 SCC 317 and *Satender and others Vs Saroj and others* 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgements, no question of law is required to be framed.

18. The learned Civil Judge has recorded his findings on issue No. 1 which is material issue. In para Nos. 13 to 24 of the judgement, the learned Civil Judge has elaborately discussed the evidence led on record.

19. Both the Courts below got swayed by the fact that revenue entries in Khasra Girdawari and Jamabandi are in favour of the respondents-defendants and presumption of truth is attached to the entries of Jamabandi. So, the plaintiff has failed to prove his case. The learned first Appellate Court has discarded the testimony of PW1 on the grounds that in examination-in-chief, he has deposed that the appellant-plaintiff has set up his residence and is also cultivating the suit property and it was observed by the learned first Appellate Court that it is not the case of the appellant-plaintiff. Rather, the appellant-plaintiff in his pleadings has pleaded that he is living in Phagwara. So, the question of his residing in the suit property and cultivating the suit property does not arise and that the witness is going beyond the pleadings. The learned first Appellate Court has lost site of the fact of pleadings of the suit. In plaint, the appellant-plaintiff has specifically averred that he has constructed his house and is residing in the suit land and is maintaining the same.

20. The relevant portion of facts of the plaint reproduced by the learned first Appellate Court reads as under:-

“It is further submitted by the plaintiff that the said house on the suit land came into the possession of Ram Chand and now after the death of Ram Chand, the appellant-plaintiff is in possession of the same, the plaintiff is part time living in Phagwara and mostly he resides in the village. That the house and the land are being managed by the plaintiff, the plaintiff is maintaining two cows which are being tethered in the built area of khasra No. 40, the plaintiff on account of the exigencies of his work is unable to pursue his remedy in the Court x x x x.”

21. So, this portion of the plaint reproduced by the learned first Appellate Court clearly shows that the learned first Appellate Court has discarded the testimony of Nirmal Singh by recording wrong facts. Both the Courts below further discarded the case of the appellant-plaintiff on the ground that similar suit of the plaintiff was earlier dismissed on 27.09.1999. But, both the Courts below have lost site of the fact that no document with regard to pleadings and decision of that suit has been proved on record by either party. So, from mere fact that a previous suit filed by the plaintiff was dismissed that would not bar the present litigation particularly when the litigation is only for seeking permanent injunction and it is settled law that each new threat to the right of the plaintiff gives rise to a new cause of action and it is not proved on record that on what grounds the previous suit was dismissed as to if the dismissal was in default or it was on merits or on the basis of some settlement. So, in the absence of proper material on record, no opinion can be formed that due to dismissal of the previous suit, the present suit is barred.

22. As regards revenue entries are concerned, it is the case of the plaintiff that revenue entries are sham entries. It is admitted case of the parties that previously predecessors-in-interest of the appellant-plaintiff were in possession of the suit land. It is the case of the defendants that possession was taken by the Forest Department on the basis of order passed by the Deputy Commissioner, Hoshiarpur. As per notification exhibit D-5, the land in question was declared to be part of the forest and on the basis of order of the

Deputy Commissioner, Hoshiarpur bearing No. 113 of 11.01.1999, Halqa Patwari entered Rapat No. 335 of 18.03.1999 in Daily Diary and since then the Forest Department was shown to be in possession of the property in dispute. Once, it has been admitted by the parties that the plaintiff and his predecessors-in-interest were in possession of the suit property, then it was for the defendants to prove on record that the possession was lawfully taken from the plaintiff on the basis of order passed by the Deputy Commissioner, Hoshiarpur. But, there is no evidence on record that the plaintiff was ever lawfully dispossessed from the suit property. Mere transfer of entries in the revenue record on the basis of order passed by the Deputy Commissioner, Hoshiarpur would not amount to dispossession of the plaintiff from the suit property. It was for the respondent-defendants to prove on record that the plaintiff was actually dispossessed from the suit property either lawfully or forcibly on the basis of order passed by the Deputy Commissioner, Hoshiarpur. But, there is no such evidence on record.

23. The defendants have examined Ashok Kumar Kalia as DW1 and in cross-examination, as recorded in para No. 21 of the judgement of the learned Civil Judge, he has admitted the possession of father of the plaintiff over the suit land as per Exhibits P11 to P16 and volunteered that he cannot tell orally in which year the Patwari has corrected the revenue record, nor he could tell anything about the validity of the same, nor there is any other construction or hut etc. over the property in dispute. He failed to deny the photographs Exhibits P5 to P9 being of the suit property. He admitted that no possession of the property in dispute was ever taken by the Forest Department through any Court. He volunteered that it was taken as per the order of the District Collector, but could not produce a copy of the same. So, now considering the fact that the defendants have failed to prove on record that possession was ever

taken from the plaintiff, the findings were recorded by both the Courts below only on the basis of revenue entries having been corrected on the basis of the order passed by the Deputy Commissioner, Hoshiarpur and the case of the plaintiff was wrongly discarded by both the Courts below. The plaintiff has successfully proved on record that he is in possession of the suit property and has not been dispossessed from the suit property by the defendants who are the owners of the suit property. So, when the plaintiff since his grand-father is in possession of the suit property, he is certainly entitled to protection of his possession against forcible dispossession. The respondents-defendants can take possession in accordance with law. The findings recorded by both the Courts below are not sustainable.

24. So, the appeal is allowed and the judgements and decrees passed by both the Courts below are set aside.

(VIRINDER AGGARWAL)
JUDGE

05th September, 2025
Amodh Sharma

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