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

RSA-5417-2017 (O&M)

Date of Decision: 02.09.2025

Mehta Ram and another

.....Appellants

Versus

Gram Panchayat Behlana and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Surinder Gandhi, Advocate
for the appellants.

HARKESH MANUJA, J. (ORAL)

CM-14421-C-2017

For the reasons mentioned in the application, the same is allowed. Delay of 32 days in re-filing the appeal is condoned.

RSA-5417-2017 (O&M)

By way of present appeal challenge has been laid to the judgments and decrees dated 18.04.2013 and 31.08.2016 passed by the Courts below; whereby the suit for possession and permanent injunction filed at the instance of appellants / plaintiffs with respect to property forming part of Khasra No.42, situated within the revenue estate of Village Behlana, U.T. Chandigarh came to be dismissed.

2. In short, while claiming the suit property bearing Khasra No. 18//42, situated within the revenue estate of Village Behlana, UT Chandigarh to be a passage, the appellants filed a suit for possession



as well as permanent injunction to the effect that the respondent Gram Panchayat had unauthorizedly taken possession of the same having raised a boundary wall thereupon in an unlawful manner. It was also pleaded that the said passage was being used by the residents of the Village and the obstruction raised thereupon was unlawful on the part of Gram Panchayat of the Village. Plaintiffs further pleaded that they happened to be owner in possession of part of Khasra No. 18//27 and the land forming part of Khasra No. 42 was being used as a passage to their land bearing Khasra No.18//27, thus the obstruction was illegal and hence the present suit.

3. Upon notice, written statement was filed by respondents, controverting the stand taken by the appellants while stating that the appellants/ plaintiffs they were no more the owners of land forming part of Khasra No. 18//27 as the same already stood sold by them. It was also submitted that the land forming part of Khasra No. 42 was never used as common passage but was reserved during consolidation for being utilized as '*Kura Dan*' by the residents of the village. It was further pleaded that the suit for permanent injunction qua the same property filed by the appellants was dismissed vide judgment and decree dated 21.12.1999 passed by the trial Court and the was even upheld in appeal vide judgment and decree dated 09.09.2002 and thus the present suit was not maintainable being barred under Order 2 Rule 2 CPC.

4. On the pleadings of the parties, following issues were



framed:-

1. *Whether plaintiffs are entitled to decree for possession as prayed for? OPP*
2. *Whether plaintiffs are entitled to decree for declaration as prayed for? OPP*
3. *Whether suit of plaintiffs is barred under order 2 Rule 2 of CPC? OPD*
4. *Whether the suit of plaintiff is barred by the principle of res-judicata? OPD*
5. *Whether the suit is bad for non-joinder and mis-joinder of parties? OPD*
6. *Whether the suit is barred by limitation? OPD*
7. *Whether plaintiffs have no locus standi to file the present suit?OPD*
8. *Whether plaintiffs have no cause of action to file the present suit? OPD*
9. *Whether the suit is not in the present maintainable form?OPD*
10. *Whether plaintiffs have not come to the court with clean hands? If so its effect?OPD*
11. *Whether the suit is bad for want to compliance of Order 7 Rule 11 of CPC?OPD*
12. *Relief.”*

5. After appreciation of evidence led by the parties, the learned trial Court went on to dismiss the suit, *inter-alia*, being barred under Order 2 Rule 2 CPC vide judgment and decree dated 18.04.2013. Aggrieved thereof, the appellants/ plaintiffs filed first appeal, however, the same was also dismissed by the Court of learned Additional District Judge, vide judgment and decree dated 31.08.2016.



6. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellants submits that the land forming part of Khasra No. 42 was being used as passage and an entry to this effect was also recorded in Khasra Girdwari for the year 1990, which was wholly over-looked by the Courts and thus the judgments and decrees impugned herein were liable to be set aside and consequently the suit filed by appellants/ plaintiffs was required to be decreed. No other argument has been addressed.

7. Having heard learned counsel for the appellants and gone through the paper-book, I am unable to find any substance in the submissions made on behalf of the appellants.

8. The case set up by the appellants is that they are owners in possession of part of Khasra No. 18//27 and the property forming part of Khasra No. 42 is being used as a passage so as to reach Khasra No. 18//27. Undisputedly, it has been established on record that the appellants have no more remained owner in possession of the property forming part of Khasra No. 18//27 as the same already stood sold by them.

9. Furthermore, from the documentary evidence available on record in the shape of Exs. D1 to D9, it was proved that the property forming part of Khasra No.42 belonged to *abadi deh* and was being used as '*Kura Dan*' and was never used as a passage. Mere stray entry in the khasra girdwarai for the year 1990 showing the appellants



to be in possession thereof was liable to be just ignored in view of the consistent revenue record to the contrary. Besides it, the suit filed at the instance of appellants was even barred by Order 2 Rule 2 CPC as in the previous suit, the appellants/ plaintiffs never ever prayed for grant of possession and the only prayer made by them for permanent injunction was dismissed by the learned trial Court vide judgment and decree dated 21.12.1999 (Ex.DA) and the appeal against the same was also dismissed vide judgment and decree dated 09.09.2002 (ExDB).

10. As such, in view of the discussion made in the foregoing paras, no question of law, much less substantial question of law is involved in the present appeal; as there is no illegality or irregularity warranting interference by this Court with the concurrent findings of fact recorded by the Courts below, the present appeal being devoid of merits is, therefore, dismissed.

11. Pending misc. application(s), if any, shall also stand disposed of.

02.09.2025
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned?
Whether Reportable?

Yes/No
Yes/No