



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM-3528-C-2025 in/and
RSA-4363-2019 (O&M)
Date of decision: 01.04.2025**

Malkeet Singh and another

...Appellant(s)

Vs.

**The Butter Bakhua Multipurpose Cooperative
Agricultural Society Limited**

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. B.S.Aulakh, Advocate for the applicants/appellants.

NIDHI GUPTA, J.

CM-3528-C-2025

Prayer in the present application under Section 151 Cr.P.C. is for waiving off the cost imposed vide order dated 11.03.2025.

2. Learned counsel for the applicants/appellants submits that vide order dated 11.03.2025, the matter was adjourned at request of learned proxy counsel for the appellants subject to payment of cost of Rs.5,000/- for the reason that the matter pertains to the year 2019; and notice is yet to be issued in the same; and the appeal has been adjourned on several dates.

3. It is pointed out by learned counsel for the applicants/appellants that due to the sudden demise of a relative, he could not appear on 11.03.2025.

4. Heard.



5. Keeping in view the above said reason, the present application is allowed and the costs of Rs.5,000/- is waived off.

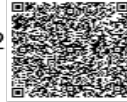
6. At the oral request of learned counsel for the appellants, the date of hearing of the main case is preponed from 26.11.2025 and the matter is taken up on Board today itself.

RSA-4363-2019 (O&M)

The defendants are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the respondent/plaintiff for permanent injunction restraining the defendants from causing any interference into or dispossessing the plaintiff-Society from building marked as ABCDEF in the site plan illegally and forcibly, has been decreed 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 appellants are the 'defendants'; and respondent is the 'plaintiff'.

3. Brief facts of the case are that the plaintiff-Society is registered under the Cooperative Society Act and is doing business of distributing the fertilizers, cattle feed and other essential commodities to its members/farmers. Previously, on the land on which the building of the plaintiff-Society is constructed, there was a house which was owned and possessed by Baldev Singh son of Guranditta. The same was sold by Baldev Singh vide Sale Deed dated 17.09.1979 to Jagar Singh; and Jagar Singh has further sold the said land to the plaintiff-Society vide Sale Deed dated 30.07.1980. Since then, the plaintiff-Society is owner in possession of the



suit property and has constructed shops etc. in which fertilizers, cattle feed and other essential commodities have been stored. As such, defendants have no concern with the suit property. However, out of greed, the defendants have sought to occupy the same illegally and forcibly. The plaintiff tried to stop the defendants in their illegal acts, but no avail. Hence, the present suit was filed on 01.08.2014.

4. Upon notice, defendants appeared through counsel and resisted the suit by filing written statement. Besides formal objections, it was pleaded that Baldev Singh, Bikkar Singh, Bachittar Singh, Gurcharan Singh, Ajmer Singh sons of Guranditta Singh are owners in possession of the suit property. All of them have died and now their legal heirs are the defendants Malkeet Singh and Gurdev Kaur, as also Sukhwinder Singh and Surjit Singh, who have not been impleaded by the plaintiff as party to the suit. It was further stated that the above said legal heirs are owners in possession of the suit property and their names are also mentioned in the revenue record; that Baldev Singh was owner in possession of 1/5 share in the suit property and he has no right to sell the entire land; that defendant Malkeet Singh and Sukhwinder Singh had previously filed a Civil Suit No.177 dated 14.01.2013 titled as "*Sukhwinder Singh vs. Sukhpal Singh*", which was decided on 12.08.2013. In that case Sukhpal Singh, Inspector of the Society had given a statement that Society has no concern with the suit land, and it will not interfere in the same. It was contended that accordingly, the present suit was barred by res judicata. Thus, dismissal of the suit was prayed for.



5. Plaintiff filed replication re-asserting the averments made in the plaint and denying those made in the written statement.

6. On the basis of pleadings, following issues were framed: -

“1. Whether the plaintiff is entitled to permanent injunction, as prayed for?OPP.

2. Whether the suit is not maintainable in the present form?
OPD

3. Whether the plaintiffs has no cause of action and locus standi to file the present suit?OPD

4. Whether the suit is hit by principle of res judicata? OPD

5. Relief.”

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 4 in favour of the plaintiff and against the defendants; and accordingly, vide judgment and decree dated 15.09.2017, the learned trial Court decreed the suit of the plaintiff. The appeal filed by the defendants was dismissed with costs by learned District Judge, Sri Muktsar Sahib vide judgment and decree dated 10.04.2019, thereby affirming the findings of the learned trial Court. Hence, the present second appeal by the defendants.

8. The sole argument raised by learned counsel for the appellants is that defendant No.1/appellant no.1 herein and Sukhwinder Singh had previously filed a Civil Suit No. 177 dated 14.1.2013 titled as “*Sukhwinder Singh vs. Sukhpal Singh*”, which was decided on 12.08.2013. It is submitted that in the said case Sukhpal Singh, Inspector of the plaintiff-Society had given a statement that Society has no concern with the suit land, and it will not interfere in the same. It is submitted that in view of this admission of



the Inspector of the plaintiff-Society, the suit of the plaintiff could not have been decreed. It is argued that once the plaintiff had admitted its fault in the earlier suit; then it could not have filed fresh suit on the same ground. Moreover, evidence on record has been misread by the Id. Courts below.

9. No other argument is raised on behalf of the appellants/defendants.

10. I have heard learned counsel for the appellants/defendants and perused the case file in great detail.

11. I find no merit in the sole argument advanced on behalf of the defendant. First and foremost, in respect of the said argument, Issue No.4 had been framed by the learned trial Court to the effect that: "*Whether the suit is hit by principle of res judicata? OPD*". However, during the course of arguments before the Id. trial court, this issue was not pressed by the defendants. Accordingly, it is recorded in para 19 of the impugned judgment dated 15.09.2017 of the Id. trial Court that: -

"Issues no.3 and 4:

Onus to prove both these issues was on the defendants, but during the course of the arguments these issues were not pressed by the defendants. Accordingly, these issues are decided against the defendants and in favour of the plaintiff."

12. Thus, given the fact that the above said issue regarding res judicata was not pressed by the defendants before the learned trial Court, the same cannot be raised at this stage before this Court.



13. Furthermore, even the other pleas of the defendants, albeit not argued before this Court, however, are liable to be rejected. It was the pleaded case of the appellants before the learned Courts below that they are owners in possession of the suit property and their names are also mentioned in the revenue record. The appellants had further contended that no mutation of the suit property was sanctioned in favour of the plaintiff-Society. The said pleas and arguments on behalf of the appellants were rejected by the learned Courts below as, as per the evidence on record, the suit land had been purchased by the plaintiff-Society from Jagar Singh vide registered Sale Deed No. 717 dated 30.07.1980 Ex.PW5/A, which was duly proven by PW3 and PW5. However, it is strange that at no stage neither in the pleadings nor at the time of arguments, did the defendants mention anything about the said Sale Deeds Ex.PW5/A and Ex.PW4/B, or mentioned that the Sale Deeds are illegal, null and void. As such, even no evidence was led by the defendants to counter the case set up by the plaintiff.

14. On the other hand, the plaintiff-Society had proven its exclusive possession over the suit property by way of oral as well as documentary evidence. In this regard, relevant findings of the learned lower appellate Court are in para 23 of the judgment dated 10.04.2019 read as under:-

“23. Trial court has further rightly observed that this plea of the defendants that no description of suit property had been given by the plaintiff Society in the plaint is without any



substance, when the boundaries of the suit property tally with the boundaries of property as mentioned in the Sale Deed Ex.PW4/B and Ex.PW5/A. DW1 has stated in his cross-examination that Kothas are existing in the suit property and these are having the shutters towards the road side. But it is quite improbable that the Kothas are having the shutters rather these are the shops, as has been shown in the site plan. Moreover DW1 and DW2 are also contradictory to each other, when DW2 has stated that no construction is existing in the suit property. The defendants have not challenged the sale deeds Ex.PW4/B and Ex.PW5/A being illegal, null and void. Thus the plaintiff Society had led cogent and convincing evidence in order to prove its possession over the suit property. From the resolutions that have been brought on record by the plaintiff, it is obvious that the process for the construction was going on right from 16.08.1984. As these resolutions had been passed before filing of the present suit which strengthens the fact of their being genuine. If in the earlier suit the Inspector of the Society, who was a party to that suit, made his statement in the court then it is not binding upon the Society. DW1 has also admitted in his cross-examination that the Society was not made a party in the earlier suit. He has also admitted that Sukhpal Singh was just employee of the Society and he has no concern with the property of the Society, It is also immaterial if no mutation on the basis of Sale Deed had been sanctioned in favour of plaintiff Society. Resultantly, no illegality or infirmity has been noticed by this Court in the findings of the trial Court. So the findings recorded by the trial Court stand affirmed.”

15. Learned counsel for the appellants/defendants is unable to dispute or controvert the above said facts and findings.



16. In view of the above, present regular second appeal is hereby
dismissed.

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

01.04.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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