



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

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**RSA-779-2019 (O&M)****Date of Decision : 29.07.2025**

KEHAR SINGH AND ORS

.... Appellants

VERSUS

MALKIAT SINGH AND ORS

.... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Rishabh Gupta, Advocate for the appellants.

**ALKA SARIN, J. (ORAL)**

1. The present appeal has been preferred by the plaintiff-appellants challenging the concurrent findings returned by the Trial Court vide impugned judgment and decree dated 28.01.2016 and by the First Appellate Court vide impugned judgment and decree dated 05.02.2018.

2. The plaintiff-appellants had filed a suit for declaration to the effect that the plaintiff-appellants are successors-in-interest of late Sh. Wasava Singh son of Gurmukh Singh who was owner of the suit land given in the head note of the plaint as per *Bandobast* 1934 BK qua 19 Kanals of land situated in Patti Wasava Singh of Village Tibba, Tehsil Sultanpur Lodhi, District Kapurthala. Further relief of permanent injunction was also sought that the defendant-respondents be restrained from interfering in the peaceful possession of the plaintiff-appellants over the land measuring 6 Kanals out of the aforesaid land. It was further averred that earlier a civil suit being CS-224 of 01.10.2004 titled 'Kehar Singh and others V/s Malkiat

Singh and others' was decided vide judgment and decree dated 03.10.2007 against which an appeal was preferred and the suit was got dismissed as withdrawn vide order dated 04.11.2008 with permission to file a fresh suit on the same cause of action. Hence, the present suit was filed by the plaintiff-appellants.

3. On notice, defendant-respondents No.1 to 7 and 9 appeared through counsel and filed their joint written statement whereas defendant-respondent No.8 was proceeded against *ex parte* vide order dated 19.01.2011. Defendant-respondents No.1 to 7 and 9 raised various preliminary objections qua maintainability, suit being barred by *res judicata* and provisions of Order II Rule 2 CPC. It was further the stand taken that Gurdev Singh (plaintiff No.2) and Lal Singh (plaintiff No.4) had appeared as PW-5 and PW-1 respectively in the earlier suit wherein they have admitted that they have nothing to do with the property left by Wasava Singh son of Gurmukh Singh. On merits, the averments made in the plaint were denied.

4. Replication was filed reiterating the stand taken in the plaint and controverting the stand taken in the written statement.

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

- a) Whether the suit is barred by principle of *res judicata* and under Order 2 Rule 2 CPC ? OPD
- b) Whether the plaintiffs have not come to the court with clean hands ? If so, its effect ? OPD

- c) Whether the suit of the plaintiffs is barred by limitation ? OPD
- d) Whether the suit is bad for non-joinder of necessary parties ? OPD
- e) Whether the suit of the plaintiff is not maintainable in the present form ? OPD
- f) Whether the suit land is comprised of khasra numbers as alleged ? OPP
- g) Whether the plaintiffs along with other descendants of Wasawa Singh are owners of the suit land ? OPP
- h) Whether the plaintiffs are entitled to declaration as prayed for ? OPP
- i) Whether the plaintiffs are entitled to permanent injunction, as prayed for ? OPP
- j) Relief.

6. Vide impugned judgment and decree dated 28.01.2016 the learned Trial Court dismissed the suit primarily on the ground that the same had been filed for seeking relief of declaration without seeking any possession. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed vide impugned judgment and decree dated 05.02.2018 passed by the learned First Appellate Court. Hence, the present regular second appeal by the plaintiff-appellants.

7. Learned counsel for the plaintiff-appellants would contend that Wasava Singh was shown as owner of Patti Wasava Singh as per the *Bandobast* of 1934 BK and that the plaintiff-appellants being successors-in-interest of Wasava Singh had become owners of the land. It is further the contention of the learned counsel for the plaintiff-appellants that the claim of the plaintiff-appellants was that the land belongs to the Patti and their predecessor-in-interest was shown to be in possession of the suit land and hence the suit ought to have been decreed.

8. Heard.

9. In the present case as per Ex.PW-3/2 i.e. the translated copy of *Bandobast*, the land in dispute was shown as *Shamlat Deh/Shamlat Patti Sarkara* in the column of ownership and in the column of cultivation it has been shown as *Mukbuja Malkan* and the nature of the land had been shown as *Gorah Deh*. The First Appellate Court has held that the question which would be involved in the present case as to whether the land was *shamlat deh* or not and as per the provisions of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 the jurisdiction of the Civil Court is barred. Further still, there is not an iota of evidence on the record to show that the land in dispute had fallen to the share of the plaintiff-appellants. No revenue record was produced by the plaintiff-appellants to show when and how they came into the possession of the suit land. PW-2 Kehar Singh admitted that the consolidation proceedings in Village Tibba took place about 40-50 years ago and he was not aware of the earlier khasra number(s) of the suit land which was/were existing prior to the consolidation

proceedings. The plaintiff-appellants had not sought any relief of possession and had filed a simplicitor suit for declaration. The declaration sought is qua 19 Kanals of land and permanent injunction was sought only qua 6 Kanals of land. Learned counsel for the plaintiff-appellants has not been able to convince this Court that the suit for declaration qua 19 Kanals of land would be maintainable in the absence of having sought relief of possession. No other argument was urged.

10. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

**29.07.2025**  
*Aman Jain*

**(ALKA SARIN)**  
**JUDGE**

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