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

**RSA-1470-2019 (O&M)
Reserved On: 07.08.2025
Pronounced On:13.08.2025**

Fakir Singh

.....Appellant

VERSUS

Munshi Singh (Deceased) Through LRs.

.....Respondents

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. K.K. Garg, Advocate
for the appellant.

Mr. Chanderhas Yadav, Advocate
for respondents No.1(a) to (d).

None for respondent No.2.

Mr. Akash Vashisth, Advocate
for respondent No.3.

MANDEEP PANNU, J

1. Present regular second appeal has been filed by the appellant/plaintiff assailing the correctness of concurrent findings of learned Courts below while dismissing the suit for permanent injunction.
2. Brief facts of the present case are that plaintiff alleges himself to be the owner in possession of property No.728, as detailed in the head note of the plaint, purchased by Ram Singh, who is father of plaintiff. It is alleged that after the death of Ram Singh, the suit property devolved upon the plaintiff but since plaintiff along with his family used to reside in Gurgaon, he has asked his real uncle Munshi Singh i.e defendant No.1, to look after the suit property. Now,



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defendants No.1 & 2, have started claiming their ownership over the suit property. They have no concern with the ownership and possession of the suit property.

3. In a joint statement filed by defendants No.1 to 3, it is alleged that the plaintiff has no concern and right over the suit property. In fact, father of the plaintiff-Ram Singh and defendant No.1, are real brothers. Being *Karta* of family, sale certificate was issued in the name of plaintiff's father. Defendant No.1, is residing in the suit property for the last many years. Defendant No.2 is residing in Dhani, Kirs Road and he has alienated his share in favour of defendant No.3 vide agreement to sell dated 18.08.2008. The defendant No.3 is in possession over the suit property. Defendant No.3 by filing a counter-claim took up the stand that he is the prospective vendee of the suit property and had spent 2-3 lakhs and had raised construction over the suit property and plaintiff has no concern with the suit property. On the other hand, the plaintiff by filing reply to the counter-claim has denied the claim of defendant No.3.

4. Learned trial Court while dismissing the suit of the plaintiff had observed in para No.11 of the judgment that plaintiff has failed to prove that he was the owner in possession of suit property by adducing any cogent evidence in his favour. Therefore, he is not entitled for the relief of injunction.

5. On the issue regarding maintainability of the counter claim of defendant No.3, learned trial Court has held that in the absence of any cogent evidence counter claimant/defendant No.3, he is not entitled to the relief of injunction against the plaintiff.

6. Feeling aggrieved by the above-said order of the learned trial Court, an appeal was preferred filed by plaintiff and other Civil Appeal (cross-objections)



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by defendant No.3. Learned Appellate Court has affirmed the findings of learned trial Court and dismissed both the appeals, one filed by plaintiff-Fakir Singh and the other Civil appeal (cross-objections) filed by defendant No.3.

7. Learned counsel for the appellant/plaintiff has argued that he does not dispute the findings of learned Courts below regarding the possession over the suit property and a relief of permanent injunction having being denied to the plaintiff. However, both the learned Courts below have erred in its findings with regard to the title of the suit property without there being any issue of ownership. He further argued that the judgment and decree passed by both the learned Courts below be modified so far as these relate to the findings returned on the title of the suit property. He further submitted that in a suit for permanent injunction, the title is not to be seen. Learned counsel for respondents No.1 and 3 on the other hand has argued that both the learned Courts below have rightly dismissed the suit of the plaintiff for permanent injunction and has rightly held that the plaintiff is not the owner of the property in dispute and the judgments of the learned Courts below do not require any interference.

Findings

8. Learned counsel for the appellant/plaintiff, at the outset, fairly conceded that he does not dispute the concurrent findings of the learned Courts below insofar as they relate to possession of the suit property and the consequent dismissal of the suit for permanent injunction based on possession. However, he submits that the learned Courts below ought not to have recorded findings on the ownership of the parties over the disputed property, as the present *lis* was a simple



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suit for permanent injunction in which title was neither in issue nor required to be adjudicated.

9. Learned counsel further stated that the appellant/plaintiff would be satisfied if the impugned judgment and decree is modified to the limited extent that the findings of the learned Courts below regarding the title be treated as *nonest*, with the clarification that in a suit for permanent injunction, ownership is not to be determined unless the same is directly in issue.

10. This Court finds merit in the submission as made by the learned counsel for the appellant/plaintiff. In *Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594*, the Hon'ble Supreme Court held that in a suit for injunction based on possession, the question of title does not arise for determination unless specifically pleaded and made an issue. The Court is required only to ascertain possession and the right of the plaintiff to protect such possession.

11. In the present case, there was no specific issue framed regarding ownership, and the relief sought was confined to protection of possession. The concurrent findings of the learned Courts below on possession are based on proper appreciation of evidence and calls for no interference by this Court, particularly as the appellant has also not challenged them on merits. However, the findings recorded on the ownership/title of the property, in absence of an issue to that effect, were beyond the scope of the suit and are, therefore, liable to be ignored for all purposes.

MODIFICATION OF JUDGMENT AND DECREE

12. In view of the above discussion and settled law, the impugned judgment and decree of the learned Courts below are modified to the extent that:



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- i) The findings relating to possession of the suit property and the consequential injunction restraining the defendants from dispossessing the plaintiff except in due course of law, are upheld.
- ii) the findings recorded on the title/ownership of the suit property are set aside, being beyond the scope of the present suit, and shall have no bearing on the rights of the parties in any future proceedings regarding ownership.

CONCLUSION

13. Accordingly, the appeal is partly allowed in the above terms. The decree, as modified, shall reflect that the question of title has not been adjudicated and remains open for determination in appropriate proceedings.

14 Pending application(s), if any, also stand disposed off.

August 13, 2025
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(MANDEEP PANNU)
JUDGE

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