



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

(1) **RSA-4299-2003 (O&M)**  
Reserved on : 15.09.2025  
Pronounced on : 19.09.2025

**Smt. Bismillah and others** .....Appellant (s)

**Vs.**

**Badlu and others** .....Respondent(s)

(2) **RSA-4580-2003 (O&M)**

**Mohammad Isak** .....Appellant (s)

**Vs.**

**Badlu and others** .....Respondent(s)

(3) **RSA-4581-2003 (O&M)**

**Ali Mohammad and others** .....Appellant (s)

**Vs.**

**Badlu and others** .....Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present: Mr. Sukhandeep Singh, Advocate for  
Mr. Lokesh Sinhal, Advocate  
for the appellants in RSA-4299-2003.

Mr. Kulbhushan Sharma, Advocate  
for the appellant in RSA-4580-2003 and RSA-4581-2003.

Mr. Rajesh Lamba, Advocate and  
Mr. Vinod Kumar, Advocate  
for the respondents.

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**RAMESH KUMARI J.**



Vide this common judgment, above referred three regular second appeals are decided as the issues involved therein are common. For brevity, facts have been taken from RSA Nos. 4299 and 4580 of 2003.

1. (i) Appeal No.4299 of 2003 is filed by all the five legal heirs (Appellants/plaintiffs) of original plaintiff Ismail Khan Madar against the judgment and decree dated 06.03.2003 rendered in Civil Appeal No.55 of 09.05.2001 against the judgment and decree dated 23.04.2001 passed by learned trial Court in Civil Suit No.RBT-624 of 1991, instituted on 12.01.1991/01.08.1997 for permanent injunction. The learned trial Court dismissed the suit and the first Appellate Court dismissed the appeal. The subject matter of the civil suit No.624 of 1991 is as under:-

Land comprising Khewat No.156 khata No.211, Rect. No.56 Killa No.12/1(3-5), 15/2(1-13), 16/1(4-18), 19/2(3-9), 25/2(0-4), Rect. No.57 Killa No.11, (7-7), Rect. No.96(0-17) total 21 kanal 12 marla situated within the revenue estate of village Fatehpur Taga, Tehsil Ballabgarh District Faridabad (Haryana) as per *jamabandi* for the year 1988-89.

1. (ii) Two appeals bearing numbers RSA-4580 and 4581 of 2003 arise from the judgment and decree rendered by learned first Appellate Court Faridabad (Haryana) in appeal No. RBT 41 of 28.10.2002, instituted on 04.03.1999 decided on 19.05.2003 vide which judgment and decree rendered in Civil Suit No.47 instituted on 12.01.1987/22.03.1987 decided on 30.01.1999 by learned trial Court decreeing the suit for permanent injunction was set aside. The suit property is as under:-



A Residential house marked by letters ABCDEFG in the site plan enclosed with the plaint, consisting of five rooms of different dimensions, roofed with *Chapper*, one bonga, one gate and bitoras, a hand pump and several trees of Kikar, Safeda, Shehtoot, etc., situated at village Fatehpur Tagga abadi, Tehsil Ballabgarh, Distt, Faridabad, full dimensions and boundaries of which are as under:-

**Boundaries:**

On the East : Vacant Land  
On the west : Vacant land  
On the North : Agricultural land  
On the South : Pucca Road

**Dimensions:**

East : 87' (A to B), 60' (E to D) total 121'  
West : 108' (B to D)  
North : 157' (A to B)  
South : 61' (G to F) and 60' (E to D)''

1. (iii) Appeal No.4580 of 2003 is filed by Mohd. Isak, son of late Ismail Khan Madar whereas appeal No.4581 of 2003 is filed by Ali Mohd. Ass Mohd., Sher Mohd. (three sons) and Smt. Bismillah (widow) of late Ismail Khan Madar. Ismail Khan Madar was plaintiff before learned trial Court who died during the pendency of the suit and above named appellants were impleaded as his legal heirs.

**FACTS OF THE CASE OF THE PLAINTIFF IN CIVIL SUIT NO.47 OF 12.01.1987**

2. (i) The pleaded case of the plaintiff before learned trial Court is with regard to absolute owner in actual physical continuous possession and enjoyment of suit property. He purchased the land underneath suit property for



consideration of Rs.1500/- in 1949 from Smt. Jainub widow of Hatam Ali @ Kasam Ali and a writing to this effect is duly executed by her in favour of the plaintiff, on receipt of sale consideration in the presence of all the defendants who were present there at that time and witness to the said writing. Ever since its purchase, the plaintiff is absolute owner in possession of suit property.

2. (ii) In 1952, plaintiff mobilised his funds, constructed *Chappar* (shacks and hereinafter referred as shacks instead of *Chappar*), planted trees, and installed hand-pump. He is residing in the suit property since purchase as owner to the knowledge of defendants. He is paying *chula* tax, got installed domestic connection bearing account No.FD-S-159, holding ration card.

2. (iii) The defendants have no concern with the suit property. They are resourceful and influential person of the same village. They have evil eye over the suit property. Many times they tried to dis-possess the plaintiff from suit property. On 25.11.1986, the defendants put on fire the shacks as a result, the shacks, luggage and documents pertaining to ownership and possession of suit property, were burnt. Criminal case of FIR No.184 dated 25.11.1986 at Police Station Sadar Ballabgarh was also lodged against the defendants.

2. (iv) Thereafter, the plaintiff constructed another shacks over the suit property for him and his family and got latest *chula* tax receipt. The vendor of the suit property has since gone to Pakistan, as such it is not possible for the plaintiff to obtain duplicate copy of writing of sale of the land.

2. (v) The plaintiff also pleaded that in case, the ownership of the plaintiff over the suit property is not proved, he became owner by way of



adverse possession as his possession is since 1949, openly to the knowledge of defendants and public at large.

2. (vi) 2-3 days before filing of the suit, the defendants again threatened to interfere in the possession of the plaintiff, which necessitated the filing of the suit.

**WRITTEN STATEMENT OF THE DEFENDANTS IN CIVIL SUIT NO.47 OF 12.01.1987**

3. (i) The defendants filed written statement wherein they contested the suit of the plaintiff by raising preliminary objections of *locus standi* of the plaintiff, maintainability of the suit as plaintiff is not owner or in possession of suit property, plaintiff has no cause of action and that suit is bad for mis-joinder and non-joinder of necessary parties. *Shamlat Patti Daud Khan* of village Fatehpur Taga and its proprietor are owner in possession of suit property. There is *Islamik Madrasa* (Islamic School for learning) of *Shamlat Patti Daud Khan* of village Fatehpur Taga, in suit property. Suit property bears Khasra No.96 and 56/25/2 from the land of *Shamlat Patti Daud Khan* bearing Rect. No. 56, Khasra No. 12/1 (3 – 5), 15/2 (1 –13), 16/1 (4 –18), 19/2 (3 - 8), 25/2 (0-4) and Rect. No. 57, Killa No. 11(7-7) and Khasra No. 96 (0-17) total measuring 21 Kanals 12 Marlas situated within revenue estate of Villiage Fatehpur Taga. The plaintiff has no concern with the property of *Shamlat Patti Daud Khan*. Adjoining to the land of *Shamlat Patti Daud Khan*, there is other land of Gram Panchayat Fatehpur Taga bearing Rect. No. 56, Killa No. 16/2 (1-11), 25/1 (0 - 4) , 25/3 (1-0), 25/4 (3 - 16) measuring 6 Kanals 11 Marlas situated in revenue estate of Village Fatehpur Taga and on the portion of land of Gram Panchayat bearing Khasra No. 25/4, plaintiff has wrongly and illegally made some *kacha*



shacks to grab the wrongful and illegal possession. Plaintiff is wrong doer, he is not entitled for any relief.

3. (ii) On merits, in the written statement, all the averments made by the plaintiff were denied and it is alleged that site plan produced by the plaintiff is wrong and incorrect. Measurements and boundaries are wrong and incorrect. There is Islamic School for learning in the suit property since the last 30 years. Smt. Jainub had no right, title or interest in the suit property and no right to sell. She died in the year 1946 and therefore, question of executing any writing by her, does not arise. There was no shacks over the suit property, therefore, the question of putting there on fire does not arise. Defendants were involved in a false case.

4. The plaintiff filed replication denying all the preliminary objections and reiterating the averments of the plaint that he is absolute owner in possession of suit property.

#### **ISSUES IN CIVIL SUIT NO.47**

5. The learned trial Court framed following issues:-

- 1. Whether Smt. Jainub was owner and in possession over the suit property? OPP.*
- 2. Whether plaintiff purchased the suit land from Smt. Jainub, if so to what effect OPP. ?*
- 3. Whether if issue No. 1 and 2 not proved, whether the plaintiff become owner in possession on the suit property by way of adverse possession? OPP.*
- 4. Whether the plaintiff has no locus standi to file the present suit ? OPD.*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD.*
- 6 Whether the suit is bad for mis-joinder and non joinder of the necessary parties ? OPD.*



7. *Whether the defendants violated the court order intentionally and knowingly, if so to what effect? OPD.*
8. *Relief.*”

**FINDINGS OF THE LEARNED TRIAL COURT IN CIVIL SUIT NO.47**

6. The parties to the suit led evidence. Learned trial Court held that the plaintiff failed to prove his ownership over the suit property but there are shacks constructed, trees planted by the plaintiff over the suit property, therefore, the possession of the plaintiff is proved. Learned trial Court referred judgment of this Court in *Dhir Singh Vs. Mal Singh, 1992, LLR, 412*, wherein it was held that plaintiff proving to be in possession of the property but failing to prove ownership is entitled to an injunction that he is not to be dis-possessed except in due course of law. Learned trial Court decreed the suit for permanent injunction by deciding all the issues in favour of the plaintiff.

**FINDINGS OF THE LEARNED FIRST APPELLATE COURT IN CIVIL APPEAL NO. RBT-41 OF 28.10.2002 INSTITUTED ON 04.03.1999 AGAINST JUDGMENT AND DECREE IN CIVIL SUIT NO.47**

7. The defendants filed an appeal before learned first Appellate Court. The learned first Appellate Court allowed the defendants to place on record copy of judgment and decree dated 23.04.2001 passed in Civil Suit RBT-624 of 1991 by learned trial Court of that case (under challenge alongwith judgment of learned first Appellate Court, in RSA-4299 of 2003) in suit for permanent injunction filed by the plaintiff Ismail Khan Madar against the defendants pertaining to agricultural land and set aside judgment of learned trial Court and allowed the appeal on the ground that the possession of plaintiff is not legal, that there is not an iota of evidence to prove adverse possession, that the plaintiff has failed to prove his ownership over Khasra No.56/25/2 and



96 and in view of judgment of Hon'ble the Apex Court in ***Premji Rattansey Shah and others Vs. Union of India and others, 1995 (1) CCC 1***, that injunction could be granted only to protect the possession of owner or person in lawful possession.

**FACTS OF CASE OF THE PLAINTIFF IN CIVIL SUIT NO.RBT-624 OF 1991**

8. (i) In the said suit for the permanent injunction, the plaintiff Ismail Khan Madar (since died) sued defendants No.1 to 7 for themselves as well as representatives of proprietors of Patti Daud Khan of village Fatehpur Taga, Tehsil Ballabgarh and District Faridabad, whose names are mentioned in the list Annexure A of Ismai-Malkan of the Patti. The pleaded case of the plaintiff is that he is Fakir by caste and owner in possession of suit property comprising Khewat No.156 khata No.211, Rect. No.56 Killa No.12/1(3-5), 15/2(1-13), 16/1(4-18), 19/2(3-9), 25/2(0-4), Rect. No.57 Killa No.11, (7-7), Rect. No.96(0-17) total 21 Kanals 12 Marla situated within the revenue estate of village Fatehpur Taga Tehsil Ballabgarh and District Faridabad (Haryana) as per *jamabandi* for the year 1988-89. There is *Gair Mumkin Takia* in Rect. No.98 and the rest of the land is attached with said *Takia*.

8. (ii) The land was donated by the proprietors of Patti Daud Khan to the said *Takia* for the last more than 100 years. Initially the land was held by predecessor-in-interest of Smt. Jainub widow of Hatam Ali @ Kasam Ali and after the death of Hatam Ali @ Kasam Ali, land was inherited by his widow Smt. Jainub. The land was in their possession for rendering the services to *Takia*. Whosoever was to render the services, was to remain in possession of



the land as rent free grant on account of service rendered to the said *Takia*. The status of such land holder was that of a *dohlidar* or as permanent and irrevocable grant.

8. (iii) Plaintiff was *chela* of Smt. Jainub during her presence in India. He was managing the *Takia* and assisting Smt. Jainub in agriculture. After partition, Smt. Jainub migrated to Pakistan. Thereafter, plaintiff is managing the affairs of *Takia* of Fakirs and cultivating the land attached to said *Takia*. In some parcel of land, he had constructed residential houses, wherein he and his family are residing for the last more than 40 years i.e. since the time of Smt. Jainub.

8. (iv) The possession of the plaintiff over the suit property is continuous, peaceful, open, un-intrupted and in hostile manner for more than 12 years and he has become owner.

8. (v) The defendants denied his right, title and interest over the suit property and threatened to interfere in possession for which they have no right. Defendant No.8 claimed that he was permitted by defendants No.9 to 23 to take possession of the suit land and make construction therein and he started dispossessing the plaintiff and started digging foundation for which he is not entitled nor the proprietors of Patti Daud khan. He prayed for decree of permanent injunction against the defendants restraining them from interfering in his peaceful possession over suit property and houses built therein and from dis-possessing him and demolishing the houses of the plaintiff except due course of law.



**WRITTEN STATEMENT BY THE DEFENDANTS OF CIVIL SUIT  
NO.RBT-624 OF 1991**

9. (i) The defendants contested the civil suit no.624 of 1991 by raising preliminary objections that the plaintiff is not owner in possession of suit land, he has no *locus standi* to file the suit, the suit is bad for mis-joinder and non-joinder of necessary parties, all the proprietors of Patti Daud Khan of village Fatehpur Taga are not impleaded as party nor application under Order 1 Rule 8 is filed, suit is barred under Order 2 Rule 2 of Civil Procedure Code, the plaintiff previously filed applications for correction of khasra girdwaries twice which were dismissed on 28.01.1988 and 07.08.1991 respectively, suit is liable to be stayed under Section 10 of CPC as another suit between the parties is pending in the Court at Faridabad, suit is not filed within the period of limitation and the plaintiff is estopped by his act and conduct from filing the suit.

9. (ii) On merits, all the averments of plaintiff were denied by the defendants and it is alleged that suit property is owned and possessed by proprietor of *Shamlat Patti Daud Khan* of village Fatehpur Taga. There is *Islam Madarsa* (Islamic School for learning) in land Khasra No.25/2 for the last 20 years and there is *Takia* in Khasra No.96. Both school and *Takia* are under the supervision and management of proprietors of *Shamlat Patti Daud Khan* of village. They invest the income of the land upon school and *Takia*. Jainub died in 1946. She was issue-less and after her death, proprietors of *Shamlat Patti Daud Khan* of village are in possession of suit property as owner. Plaintiff is permanent resident of village Sarol, Tehsil Khair, District Aligarh (UP) and he has been living in Fatehpur Taga for the last 8-9 years, his ownership over suit



property being in possession is also denied and prayer was made for dismissal of suit.

10. The plaintiff by way of filing replication denied all the averments of written statement and reiterated the pleadings.

### **ISSUES IN CIVIL SUIT NO.624 OF 1991**

11. The learned trial Court framed following issues vide order dated 27.03.1992 in civil suit No.624.

- “(1) Whether the plaintiff is in possession of suit land, if so to what effect? OPP.*
- (2) Whether the plaintiff has no locus standi to file the present suit? OPD.*
- (3) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.*
- (4) Whether the suit is barred by principle of resjudicata? OPD*
- (5) Whether the suit is liable to be stayed u/s 10 CPC? OPD.*
- (6) Whether the suit is not within time? OPD*
- (7) Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD.*
- 8) Whether the suit is not maintainable in the present form? OPD*
- (9) Whether the plaintiff has no cause of action to file the present suit? OPD*
- (10) Whether the defendants are entitled to special costs? OPD.*
- (11) Relief.”*

### **FINDINGS OF THE LEARNED TRIAL COURT IN CIVIL SUIT NO.624**

12. Parties to the suit led evidence. The learned trial Court held vide judgment dated 23.04.2001 that since the suit (No.47) pertaining to residential house is pending and subsequent civil suit no.624 is barred under Order 2 Rule 2 CPC qua that property and did not give any findings regarding the house and



further held that suit is not bad for mis-joinder and non-joinder of necessary parties since plaintiff has also moved application under Order 1 Rule 8 CPC and issue No.3 was decided in favour of the plaintiff. Learned trial Court dismissed the suit on the ground that plaintiff is not *dohlidar* of *Takia*. Plaintiff is not in possession except *Chappar* (shacks) types construction, which is not subject matter of the suit, suit property is not evacuee property, suit land vests with proprietors of *Shamlat Patti Daud Khan* of village Fatehpur Taga. Learned trial Court also referred to the judgment of Hon'ble the Apex Court in ***Premji Rattansey Shah and others Vs. Union of India and others, 1995 (1) CCC 1.***

**FINDINGS OF THE LEARNED FIRST APPELLATE COURT IN CIVIL APPEAL NO.55 OF 09.05.2021 AGAINST JUDGMENT AND DECREE OF CIVIL SUIT NO.624 OF 1991**

13. Learned First Appellate Court took note of the facts of civil suit no.47 and judgment of acquittal in favour of defendants in FIR No.184 of 25.11.1986, applications moved by the plaintiff for correction of Khasra Girdwaris of suit properties which were got dismissed as withdrawn and dismissed the appeal by holding that plaintiff failed to prove his possession over suit property, there is Islamic School over the suit property and he is resident of village Sachal, Tehsil Khair District Aligarh (UP) and not resident of Fatehpur Taga. Learned Appellate Court noted that the plaintiff is taking contradictory stand, he is not *chela* of Jainub, he is not *dholidar* and he is not owner in adverse possession or in continuous possession for more than 12 years.



**CONTENTION OF LEARNED APPELLANT/PLAINTIFF COUNSELS  
IN RSA NO.4580 AND 4581**

14. Learned counsel for the plaintiffs contended that civil suit No.47 was pertaining to *kacha* residential house/rooms, hand-pump and trees. Learned trial Court observed that the plaintiffs are in possession over the suit property on *kacha chappar*/shacks. They are in possession for more than 40 years as original plaintiff purchased the property from Smt. Jainub for consideration of Rs.1500/- and she also wrote one writing regarding this. The plaintiffs constructed shacks over the same in the year 1953, got electric domestic connection issued and paying *chula* tax. However, the entries in khasra girdawaries continuous to be in favour of Smt. Jainub. The said writing has since been burnt when the defendants put on fire the shacks of the plaintiffs. Although the defendants are acquitted in criminal case FIR No.184 vide judgment dated 19.11.1990, the *kacha* shacks are not in the land of panchayat or proprietors of *Shamlat Patti Daud Khan* of village Fatehpur Taga. Construction of shacks by the plaintiffs are admitted by defendants witnesses. Plaintiffs are in settled possession of the shacks and trees, hand-pump and they are entitled for protection of their possession. He vehemently prayed for deciding all the issues in favour of plaintiffs and restoration of the findings of the learned trial Court setting aside the findings of learned first Appellate Court by way of acceptance of appeal.

**CONTENTION OF LEARNED COUNSELS FOR DEFENDANTS IN  
RSA NO.4580 AND 4581**

15. Learned counsel for defendants contended that the *chappar*/shacks are constructed over the Panchayat land i.e. khasra No.25/4. The plaintiff has



failed to prove ownership of land over which he has constructed *chappar/shacks*. His legal heirs are in illegal possession of same. Ismail Khan Madar, original plaintiff, is not resident of village Fatehpur Taga but he is resident of a village in Aligarh. The land cannot be identified because the plaintiff has failed to mention the specific boundaries of the property. Any writing regarding transfer of ownership cannot be executed by Smt. Jainub in 1949 because she died in 1946. The land belongs to panchayat because in Ex. D1 *chappar* have been shows in killa no.25/4 which is the land of the panchayat and khasra No.16/2 is also panchayat land. The defendants are proprietors of the *Shamlat Patti Daud Khan* of village Fatehpur Taga. The plaintiffs were rightly not held owner of suit property and the learned first Appellate Court rightly held that the person, whose possession is not lawful, is not entitled for discretionary relief of permanent injunction. He vehemently prayed for dismissal of both the appeals.

**CONTENTIONS OF LEARNED COUNSEL FOR APPELLANTS/PLAINTIFFS OF RSA NO.4299**

16. Learned counsel for the plaintiffs of this appeal contended that learned trial Court and first Appellate Court committed error in dismissing the suit and appeal. Both the judgments are bad in law and contrary to facts and evidence. Both the judgments are based on surmises, conjectures and misreading of evidence, wrongful assumptions and presumptions. Original plaintiff Ismail Khan has proved that he remained in possession of suit property during his life time as *dholidar/caretaker* of *Takia*. This fact is proved from *jamabadies* Ex. P-5 to P-13 for the years 1955-56 to 1993-94. The site plan Ex.P-2 and *aksh shizra* Ex. P-3, demarcation report Ex.PW/1 proved that



original plaintiff Ismail Khan was in possession of suit property as *Dohlidar*/caretaker of *Takia* as *chela* of Smt. Jainub, who had since migrated to Pakistan and after his death, his legal heirs are in possession. Original plaintiff Ismail Khan being caretaker of *Takia* has right to cultivate the suit property and has *locus standi* to file the suit. Learned trial Court wrongly relied upon the testimony of defendants that Smt. Jainub died in the year 1946 whereas in the *Jamabandis*, she is recorded in possession upto the year 1993-94. Her possession is through original plaintiff Ismail Khan being caretaker of *Takia*. Learned trial Court in civil suit No.47 rightly held that the plaintiffs are in possession of the property and rightly passed the decree for permanent injunction, whereas not even a single document is placed on record by the defendants that after the death of Hakam Ali @ Kasam Ali, they took the possession of suit property. The defendants have failed to prove that there is Muslim school for learning over the suit property. The possession of the plaintiffs is continuous for the last more than 60 years and the plaintiffs have become owner of suit property by being in adverse possession for the last more than 30 years. The learned trial Court and learned first Appellate Court have ignored these facts. Learned counsels vehemently prayed for setting aside the judgment of learned trial Court and learned first Appellate Court and for deciding the appeal in favour of plaintiffs.

**CONTENTIONS OF LEARNED COUNSEL FOR DEFENDANTS OF RSA NO.4299**

17. Learned counsel for the defendants contended that suit property belongs to the proprietors of *Shamlat Patti Daud Khan* of village Fatehpur Taga. Plaintiff Ismail Khan was not resident of village Fatehpur but was



resident of village Sachal, Tehsil Khair, District Aligarh (UP) as admitted by him in his statement Ex.P-10. Ismail Khan or after his death, his legal heirs are never in possession of suit property. The plaintiffs have failed to prove that plaintiff Ismail Khan Madar was *chela* of Smt. Jainub and become *dohlidar*. There is *Islam Madrasa* in Khasra No.25/2 and *Takia* in khasra No.96 and both the places are run by proprietors of *Shamlat Patti Daud Khan*. The plaintiff Ismail Khan twice moved applications for correction of Khasra *girdawari* which were dismissed. The defendants have been acquitted in case FIR No.184 vide judgment Ex.D-6 dated 19.11.1990. No agriculture is being done over suit property because it is a vacant land and only *chappar* type houses are constructed over it. The plaintiff witnesses have themselves admitted that there is *Madrasa* over the suit property. Site plan Ex.P1 is contradictory to *aksh shizra* Ex.P-3 and D-3. Therefore, correct description of property is not mentioned by the plaintiff. After death of Smt. Jainub, the rights of *dohli* come to an end. The plaintiffs have failed to prove their possession over the suit property except for *chappar* type construction regarding which plaintiff-Ismail Khan Madar filed civil suit No.47 and by including the property of *chappar* in civil suit No.624, it was barred under Order 2 Rule 2 CPC and Section 10 of CPC. Since the possession of the original plaintiff over *chappar* is illegal and he and his legal heirs being not in possession over suit property except *chappars*, they cannot claim ownership rights by way of adverse possession. He vehemently prayed for dismissal of appeal by upholding the findings of learned trial Court and learned first Appellate Court.



## ISSUE-WISE FINDINGS

### ISSUE NO.1 TO 3 of CIVIL SUIT 47 of 12.01.1987 AND ISSUE NO.1 OF CIVIL SUIT NO.624 OF 12.01.1991.

18. (i) The learned trial Court framed following three issues in Civil Suit No.47 of 12.01.1987,

1. *Whether Smt. Jainub was owner and in possession over the suit property? OPP.*
2. *Whether plaintiff purchased the suit land from Smt. Jainub, if so to what effect OPP. ?*
3. *Whether if issue No. 1 and 2 not proved, whether the plaintiff become owner in possession on the suit property by way of adverse possession? OPP.*

18. (ii) Issue No.1 as under is framed for adjudication in Civil Suit 624 of 12.01.1991,

*“(i) whether the plaintiff is in possession of suit land, if so to what effect? OPP”*

18. (iii) Since the suit property of Suit No.47 of 12.01.1987 i.e. *chappar* (shacks), trees etc. were also subject matter of civil suit No.624 of 12.01.1991, therefore, these issues are taken up together.

18. (iv) (a) The plaintiff in civil suit No.47 got examined PW-1 Lakhmi Chand, who stated that connection No.FDS-159 was released on 16.11.1985 in the name of Ass Mohd., who is resident of village Fatehpur and proved copy of connection vide Ex. P1 and related documents Ex.P-2 and Ex.P-3.

When subjected to cross-examination, he expressed ignorance whether the meter has been installed in some other property or not.



18. (iv) (b) PW-2 Constable Mam Chand proved Ex. PW-2/A the copy of FIR No.184 dated 25.11.1986, which was registered against the defendants regarding setting on fire the shacks of plaintiff.

Judgment Ex.D-6 dated 19.11.1990 is tendered in evidence of Civil Suit No.624 which reveals that the accused of FIR No.184 dated 25.11.1986 registered at Police Station Sadar Ballabgarh have since been acquitted by learned trial Court.

18. (iv) (c) PW-3 Vijay Kumar Photographer placed on record photographs vide Marked Ex.A1 to Ex. A-4 and he stated that these photographs were taken by him on 25.11.1986 on the instructions of the police, at that time houses were in burnt condition.

Since accused have been acquitted as referred above, therefore, these photographs are of no relevance.

18. (iv) (d) PW-4 Sant Parkash proved the site plan PW-4/A.

When subjected to cross-examination, he stated that the said plan was prepared 10 years back and he had not seen documents of ownership.

18. (iv) (e) PW-5 Mashooq stated that LRs of plaintiff are owner in possession of disputed property and before that their father was owner in possession. He also stated about construction of houses by the plaintiff and about quarrel in the year 1986 by defendants in which houses of plaintiff were burnt.

During cross-examination, he categorically admitted that the defendants are proprietors of *Patti Daud Khan*. He admitted that plaintiff got



the possession of the house of Dharam Singh 10-15 years back and it was not got vacated through Court.

18. (iv) (f) PW-6, Allah Mehar also deposed that disputed land is owned and possessed by Ismail Khan and his children and they have constructed 4-5 *chappar* there for the last 14-15 years.

When subjected to cross-examination, he stated he had not seen the papers of ownership. He contradicted the pleadings by deposing that suit property is ancestral property of the plaintiff and it is not purchased by him.

He during cross-examination admitted that *Patti Daud Khan* is the land in ownership of proprietors and the defendants are proprietors of *Patti Daud Khan* of village Fatehpur Taga.

18. (iv) (g) Ishak Mohd. legal heir no.4 of the original plaintiff was examined as PW-7 and he corroborated the pleadings that the suit property was purchased by their father from Smt. Jainub for consideration of Rs.1500/- and their father constructed kaccha room in 1952 and defendants have no right over the suit property. He also tendered in evidence copy of receipts of *chula tax* vide Marks D and F and copy of voter list as Mark P.

During cross examination he deposed that no registry was got done from Smt. Jainub and papers which were written were not available being burnt in fire. When confronted with the pleadings of defendants, he denied all the suggestions.

18. (v) The defendants examined four witnessed in case No.47.

18. (v) (a) DW-1 Sat Parkash proved the site plan and as per testimony, the houses belonging to Ali Mohd. and Ishak Mohd. are shown in the red place.



18. (v) (b) DW-2 Badlu corroborated the averments of written statement in his testimony.

When subjected to cross-examination, he deposed that the plaintiff has constructed his *chappar* in the panchayat land and these *chappars* are since 1953. One electric connection is installed in the land of panchayat in *chappar*.

18. (v) (c) DW-3 Deen Mohd. Stated that the plaintiff has constructed his *chappar* illegally in the land of Panchayat which is alongwith the land of *Patti Daud Khan*.

During cross-examination, he reiterated that *chappars* have been constructed over panchayat land.

18. (v) (d) DW-4 Shamsudeen also corroborated the averments of written statement and deposed that the land is in cultivating possession of proprietors of *Patti Daud Khan*. He also placed on record the receipts of land tax vide Ex.D-1 to D-8. He also deposed about constructions of *kachha chappars* by plaintiff over the land of Gram Panchayat for the last 10-12 years.

When subjected to cross-examination, he was unable to tell the Khasra number of the land of Gram Panchayat.

19. The existence of *kaccha chappars/shacks* of the plaintiff is proved from the testimony of these witnesses. Therefore, findings of the learned trial Court and first Appellate Court regarding the existence of *kaccha chappars/shacks* of the plaintiff on the spot, are upheld. Be that as it may, it is still a matter for adjudication on which land the said *kachha chappars/shacks* exist and since when.



20. The Civil Suit No. 624 pertains to land bearing Khasra numbers which is allegedly given to Ismail Khan Madar by Smt. Jainub as *dholidar* of *Takia* but as per the pleaded cases of the defendants, it is land of proprietors of the *Patti Daud Khan* of Village Fatehpur.

21. (i) Plaintiff examined six witnesses in civil suit No.624.

(i) (a) PW-1 Khiloni Singh, Patwari proved *jamabandi* proved for the year 1993-94 vide Ex.P1.

(i) (b) PW-2 Randhir Singh Constable proved FIR No.184. Needless to say, defendants have since been acquitted in this criminal case.

(i) (c) PW-3 Sohan Lal proved site plan vide Ex.P-2.

(i) (d) PW-4 Mohd. son of Kitab Khan and PW-5 Mor Khan, PW-6 Isack Mohd. corroborated the averments of the plaint.

(i) (e) PW-7 Shiv Parsad brought the summon file of demarcation, which was decided on 13.01.1999. PW-8 Raghu Nath Singh Retired Girdor of Faridabad proved the demarcation report vide as Ex.PW-8/1. The demarcation was conducted upon the order of *Tehsildar* on application of Badlu (defendant).

When subjected to cross-examination, he stated that he had not prepared any site plan alongwith report PW-8/1. He admitted as correct that only from the site plan, it can be known in what area the parties are in possession. He also admitted as correct that he had not prepared the site plan of *kacha chappar*. *Kacha chappar* can be prepared within 2-4 days. When report was prepared, the *chappar* was in existence. He expressed ignorance who owns the *chappar*.



Since site plan was not prepared alongwith report PW-8/1, this report cannot be taken into consideration.

22. Defendants have examined five witnesses.

(i) (a) DW-1 Badlu son of Hyat Khan, DW-2 Lachhi, DW-3-Badlu son of Durshad and DW-5-Shamshdin in their testimonies corroborated the averments of written statement.

(b) Statement of Sanjay Jain Reader to *Tehsildar* was recorded without oath as he brought the record of demarcation file decided on 21.12.1999. DW-4 Bhim Singh retired Kanungo proved demarcation report vide Ex.DW-4/3. Ex.DW-4/3 conducted on the basis of order DW-4/2 of Assistant Collector 2<sup>nd</sup> Grade on application DW-4/1.

(c) Defendants counsel also tendered documents D-1 to D-10.

Plaintiff tendered Ex. D-15 and D-16 as copies of judgment and decree of learned trial Court in Civil Suit No.47 in rebuttal.

23. (i) It is to be seen whether the plaintiff proved his pleaded case of Civil Suit No.624 that there is *Takia* which was earlier managed by Kasam Ali husband of Smt. Jainub, after his death, managed by Jainub, suit property was given as grant by proprietors of *Patti Daud Khan* to Kasam Ali to bear the expenses to manage the *Takia* and after his death, the property was inherited by Smt. Jainub, plaintiff Ismail Khan Madar being *chela* of Smt. Jainub was looking after *Takia* and *dholidar* of suit property.

23. (ii) *Takia* is Muslim place of worship, different from *Madrassa*, which is Islamic School for learning.



23. (iii) To understand the term ‘*Dholi*’ or ‘*Dholidar*’, reference can be made here to the observation of this Court in ***Dev Dutt Vs. Gram Panchayat, Ramila, Law Finder Doc Id # 39529,***

“ 8. *Dholi* tenure is a peculiar kind of the tenure to be found in the south-eastern districts of Punjab. It is a rent free grant of a small plot of land by village community for the benefit of a temple, mosque or shrine or to a person for religious purposes. Invariably, the proprietary body is recorded as owners of the property whereas *dholidar* recorded as a tenant in the column of cultivation. How and in what manner *dholi* tenure originated is not known. All the same, it is taken that a *dholidar* is trustee who is entitled to retain its possession and has no power to alienate by means of sale, mortgage, or gift. Since this is an endowment for the benefit of village community rights of *dholidar* flows to *chela* as well. The plaintiffs who are sons, daughters, and widow of Chandgi Dass, admittedly, have not succeeded as *Chelas*. There is neither an averment nor any proof on record that at any given time they or any one of them had been accepted as a *Chela* by the village proprietary body. In the absence of any *Chela* of Chandgi Dass such a *dholi* must be assumed to have come to an end.”

23. (iv) This observation not only explains the term ‘*Dholi*’ and ‘*Dholidar*’ but also clarified that it is an endowment or grant from the proprietary property for the benefit of proprietors in favour of temple, mosque or shrine or a person carrying on religious purposes. This grant cannot be alienated, sold or gifted but can be carried on by *chela* of original *Dholidar*. In ***Bhim Singh Vs. Dalip Singh, Law Finder Doc ID# 50324*** , this Court upheld the findings of learned first Appellate Court that “ *the Dholidar was not to become owner of the property given in Dholi to him irrespective of the fact whether he performed*



*services or not. The Dholidar was only given right to enjoy the usufruct of the property and on extinction of the line of Dhoidar, the property was to revert to the proprietors. The perpetual lease created by Dholidar will be invalid after his death. No exception can be taken to the conclusion arrived at by the learned first Appellate Court.”*

23. (v) *Jamabandi* for the year 1993-94 Ex.P-5, 1988-89 Ex.P-6 and Ex.D-2, 1983-87 Ex.P-7, 1978-79 Ex.P-8, 1973-74 Ex.P-9, 1968-69 Ex.P-10, 1963-64 Ex.P-11 and also of *Jamabandi* 1959-60, of the year 1983-84 Ex.D-1, reveal that suit property is owned by the proprietors of *Shamlat Patti Daud Khan* of village Fatehpur Taga as per their share in the years 1908-09. In the column of possession, the name of Smt. Jainub widow of Hatim Ali @ Kesar Ali as tenant at will (*gair maursi*) is recorded. Pleaded case of the plaintiff is that Smt. Jainub migrated to Pakistan after partition and the pleaded case of the defendants is that Smt. Jainub died in 1946. Even if for the sake of arguments, it is presumed as correct that suit property was given as *dholi* to Hatim Ali @ Kesar Ali as *Dholidar*, then after his death the property cannot be inherited by his widow because legal heirs of *Dholidars* have no inheritance rights unless they prove to be *chela* of *Dholidar*. It is not pleaded by the plaintiff that Smt. Jainub widow of Hatim Ali @ Kesar Ali was *chela* of her husband. Therefore, Smt. Jainub cannot be *Dholidar* of the suit property and the suit property reverted back to the proprietors of *Shamlat Patti Daud Khan*. The plaintiff in suit No.624 pleaded that Ismail Khan became *Dholidar* after death of Smt. Jainub as he was her *chela* and looking after *Takia*, whereas regarding the same property, in Civil Suit No.47, he pleaded that he purchased the suit property



from Smt. Jainub for consideration of Rs.1500/-. Had the property been purchased for consideration of Rs.1500/-, in 1949, it would have been a registered document. The plaintiff has also not proved in which year Smt. Jainub migrated to Pakistan after partition. This also creates doubt in his story that he purchased the suit property for a consideration of Rs.1500/- from her. Learned trial Court rightly observed that none of the witnesses proved any ceremony of chelaship which took place in their presence and rightly held that *“Thus, it is clear that the plaintiffs could not prove that they are chela of Smt. Jainub which was essential to prove their derivative title to the suit property.”*

23. (vi) The plaintiff also attempted to get the Khasra Girdawari corrected by way of moving application Ex.D-4 before Assistant Collector, 2<sup>nd</sup> Grade on 09.12.1986, which was got dismissed as withdrawn by him on 28.01.1988 and the Assistant Collector 2<sup>nd</sup> Grade passed order Ex.D-5 for withdrawal of application. Plaintiff again filed application No.4 on 29.01.1988 for correction of Khasra Girdawari which was dismissed by Assistant Collector, 2<sup>nd</sup> Grade vide order dated 07.08.1991 Ex.D-9 with a direction to get his grievance redressed in civil Court. The statement of plaintiff Ismail Khan Madar was recorded vide Ex.D-10 before Assistant Collector, 2<sup>nd</sup> Grade during the proceedings of application No.4 on 29.01.1988 above referred. In this statement Ex.P-10, at the very opening line of cross-examination, he admitted that he is resident of village Sarol, Tehsil Khair, District Aligarh, then he stated that he was residing there 35 years ago. He was born in village Sarol and thereafter was residing there. His father was also residing there. His father had no house or property there. In the riots of 1948, he (plaintiff Ismail Khan



Madar) and his mother alongwith other persons came to Fatehpur. He sold the house in Sarol about 20 years ago. His sons and their children were residing in the house of Dharam Singh but he is residing in *Takia*. They are residing in the house of Dharam Singh for the last 15-16 years. He denied the suggestion that he and his children started residing in village Fatehpur for the last 9-10 years. electric connection was not issued in the name of Ismail Khan but on the name of his son Ass Mohd. as reflected from application Ex.P-1 dated 12.03.1984 and the electric connection was installed in the year 1984. The house number in which this electric connection is installed, is not mentioned. Even if for the sake of argument, it is presumed that the electric connection in the year 1984 was installed in the disputed *chappars/* shacks, the possession of the plaintiff is not as owner being in adverse possession because there are allegations against the defendant that they tried to take forcible possession on 25.11.1986.

23. (vii) The evidence brought on record also revealed that the description of suit property is also not proved by the plaintiff. Order 7 Rule 3 of the Code of Civil Procedure, 1908 (for short “CPC”), which pertains to the requirement of description of immovable property, reads as under:

“3. Where the subject-matter of the suit is immovable property. -- Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or number.”

In *Hayat Singh Vs. Smt. Rama Arya (2018) 1 UAD 743*, it is held that the as per the provisions contained in Order 7 Rule 3 CPC, a property is



identifiable by only two methods, one by its plot number, khasra number and second by its boundaries.

In the present civil suit No.624, *aksh shizra* is proved vide Ex.P3 Ex. D3 and site plan is Ex.P-2. PW-3 Sohan Lal, who prepared site plan Ex.P-2 stated that he had never seen *aksh shizra* of suit property. As per *aksh shizra*, Ex.D-3 Killa No.25/1 is after the road whereas in site plan Ex.P-2 Killa No.25/1 is reflected below Rect. No.96. Therefore, site plan Ex.P-2 of property of civil suit No. 624 is not in-consonance with *aksh shizra*.

23. (viii) The suit property of civil Suit No.47 is stated to be bounded on East and West by vacant land, North by agricultural land and South by *Pucca* (metalled) Road. PW-5 Mashook stated that suit property is bounded on East by passage and vacant land of the plaintiff, West by burial ground (kabristan) North by Chhaju's land and South by road. PW-6 Allah Mehar stated that on the Eastern side of the suit land is the land of Kulkarni and on the West side is Kabirstan. Chhaju's land is on the North and on the South is road.

Therefore, the plaintiff has failed to establish the identity of suit property by properly proving the description and boundaries of the same. The learned first Appellate Court in appeal against judgment of learned trial Court in Civil Suit No.47 and learned trial Court and learned first Appellate Court in Civil Suit No.624 rightly held that plaintiff has failed to prove the description/identity of suit property.

23. (ix) Learned counsel for the plaintiff of appeal No.4580 and 4581 vehemently contended that since the possession of plaintiff over *chappar/shacks* is proved he is entitled for decree of permanent injunction,



since their long established possession is proved. Learned counsel for the plaintiff of Appeal No.4299 contended that the plaintiff has become owner by adverse possession since his possession is long i.e. since 1946, 1948 and 1953.

As observed earlier, no document worth name is proved on record by the plaintiff to establish his possession over agricultural land. The revenue record does not reflect the existence of *Takia* or Masjid over suit property. The electric connection was got sanctioned in 1984. In 1986, the defendants had dispute with the plaintiff regarding which FIR No.184 was also got registered against the defendants. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long, his possession has continued, and (e) his possession was open and un-disturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession (***Dr. Mahesh Chand Sharma Vs. Raj Kumar Sharma (1996) 8 SCC***). In ***S.M.Karim Vs. Mst. Bibi Sakina, AIR 1964 SC 1254***, it is held that “*adverse possession must be adequate in continuity, in publicity and extent and a plea is required at least to show when possession becomes adverse so that the starting point of limitation against the parties effected can be found.*” These facts are not pleaded by the plaintiff in civil suit No.624 or civil Suit No.47. In the absence of pleading and proving these facts, the plaintiff



cannot be held to be owner of suit property by way of adverse possession or for that matter in possession.

23. (x) Simply because the plaintiffs have proved the existence of certain *chappars/shacks* over the suit property, does not mean that they are entitled for discretionary relief of injunction. The prayer of the plaintiff for restraining the defendants from interfering in their possession was rightly not allowed by the learned first Appellate Court in appeal pertaining to civil suit No.47 and the learned trial Court and learned first Appellate Court pertaining to litigation of civil Suit No.624. The suit land is undisputedly owned by proprietors of *Shamlat Patti Daud Khan* of village Fatehpur Taga, as per revenue record. The plaintiff has failed to prove that his possession is lawful. His possession over land of *chappars/shacks* is as trespassers. Learned first Appellate Court rightly referred to the judgment of Hon'ble Apex Court in ***Premji Rattansey Shah*** (Supra) wherein in para No.5, it is observed that,

*“5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the Courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner, pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”*

Hon'ble Apex Court in ***Padhiyar Prahladi Chenaji Vs. Maniban Jagmalbhai (deceased) through LRs and others, (Civil Appeal No.1382 of 2022, decided on 03.03.2022.)*** declined to pass a decree for permanent injunction wherein the plea of plaintiff was that she is in possession, her possession cannot be disturbed except in due process of law and the true owner



has to file substantive suit for recovery. Earlier decision of Hon'ble Apex Court in *Maria Margarida Sequeira Fernandes Vs. Erasmo Jack de Sequeira (2012) 5 SCC 370* is also referred in *Padhiyar Prahladji Chenaji* (supra). In *Maria's* case, it is held in para No.79,

*"79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment the rights of the parties are adjudicated upon by a competent court." In the said decision, this Court has approved the following findings of the High Court of Delhi in Thomas Cook (India) Ltd. Vs. Hotel Imperial (2006) 88 DRJ 545:-*

*"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed forcibly by the true owner taking law in his own hands. All these expressions, however, mean the same thing-ejectment from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.*

*Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a Court of competent jurisdiction. It does not matter who brought the action to Court. It could be the owner in an action for enforcement of his right to eject the person in*



*unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the Court and the Court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course of law' would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a Court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."*

Applying the law laid down by in **Maria's** case (supra), in **Padhiyar Prahladi Chenaji** (supra), it is held that "once the rights of the parties are adjudicated and the defendant No.1 is held to be the true owner on the basis of the registered sale deed and on payment of full sale consideration, it can be said that due process of law has been followed and thereafter the plaintiff is not entitled to any permanent injunction against the true owner."



The defendants being proprietors of *Shamlat Patti Daud Khan* of village Fatehpur Taga and true owners of suit property, the plaintiffs are not entitled to permanent injunction as prayed for in all the three appeals and the findings of the learned first Appellate Court in Civil Appeal No.RBT-41 of 28.10.2002 instituted on 04.03.1999 decided on 29.05.2003 in Civil Suit No.47 of 12.01.1987 on issue No.1 to 3 are upheld that Smt. Jainub was never the owner in possession of the suit property and that plaintiffs have failed to prove that Ismail Khan Madar purchased the suit property (underneath *chappars*) from her, neither the plaintiff became owner in possession of the suit property by way of adverse possession. Similarly findings of the learned trial Court and learned first Appellate Court on issue No.1 rendered in Suit No.624 are upheld that the plaintiff has also failed to prove that he is in possession of property of suit No.624 except of *Chappars/shacks* which is also subject matter of Civil Suit No.47.

**Issue No.4 of Civil Suit No.47 and Issue No.2 of Civil Suit No. 624**

24. Issue No.4 of Civil Suit No.47 and Issue No.2 of Civil Suit No.624 are about *locus standi* to file the respective suits. In Civil Suit No.624, learned trial Court held that plaintiff has no *locus standi* to file the suit pertaining to agricultural land on portion of which *chappars/shacks* are constructed. This issue was not raised in appeal before learned first Appellate Court against the judgment of learned trial Court in Civil Suit No.624. Learned trial Court since decreed Civil Suit No.47 and has rendered findings on this issue in favour of plaintiff, this issue was not raised by learned counsel for defendants before learned first Appellate Court. While deciding above referred issues, it has



already been held that the possession of plaintiff over land underneath *chappars/shacks* is that of trespasser and the plaintiff has failed to prove their possession over agricultural land. Regarding the land underneath *Chappars/shacks*, it is owned by proprietors of *Shamlat Patti Daud Khan* of village Fatehpur Taga and the plaintiff has no *locus standi* to file the suits for permanent injunction against true owners. Therefore, findings of learned trial Court rendered in Civil Suit No.624 on issue No.2 are upheld. Issue No.2 of Civil Suit No. 47 are also decided against the plaintiffs and in favour of the defendants.

**ISSUE NO.6 OF CIVIL SUIT NO.47 AND ISSUE NO.3 OF CIVIL SUIT NO.624**

25. Learned trial Court in Civil Suit No.47 decided this issue against the defendants being not pressed and that no evidence is led. Civil Suit No.47 is filed against 11 defendants who are proprietors of *Shamlat Patti Daud Khan*. Suit property is owned by the proprietors of *Shamlat Patti Daud Khan*. The plaintiffs were alleging threats to their dis-possession only from defendants and in that suit, they need not implead all the proprietors of *Shamlat Patti Daud Khan*.

The learned trial Court in Civil Suit No.624 decided this issue against the defendants and in favour of plaintiff on the ground that plaintiff (Ismail Khan Madar, since died) has moved an application under Order 1 Rule 8 CPC, whereby proclamation was issued to all the proprietors of Patti Daud Khan. The said proclamation is also brought on record vide Ex.P2. This issue is



not pressed during the course of arguments, therefore, findings of learned trial Court and learned first Appellate Court in both the suits are upheld.

**ISSUE NO.4 OF CIVIL SUIT NO.624**

26. Civil Suit No.624 was filed by Ismail Khan Madar Predecessor-in-interest of the plaintiff on 12.01.1991 wherein agricultural land and the land beneath the residential houses was also made part of the suit property. Earlier to that filing of the suit, Ismail Khan Madar Predecessor-in-interest of the plaintiffs filed Civil Suit No.47 on 12.01.1987 pertaining to the residential house consisting of five rooms of different dimensions, roof with *Chappars/shacks*, hand-pump, trees etc. During the course of arguments, it is conceded that subject-matter of Civil Suit No.47 of 12.01.1987 was also made part of subject-matter of civil suit No.624. Therefore, the findings of learned trial Court and learned first Appellate Court in civil suit No.624, that judgment of learned trial Court rendered in civil suit No.47 (Exhibited on record vide Ex.P-15) “shall operate *res judicata* to the extent as the plaintiff has also sought injunction against the defendants for demolishing their *chappar* type structures existed in suit property” are upheld being rightly decided.

27. No other issue is raised during the course of the arguments.

**CONCLUSION**

28. In view of the above discussions, the impugned judgment dated 19.05.2003 passed by learned first Appellate Court in Civil Suit No.47 while deciding appeal No.RBT 41 of 28.10.2002 and impugned judgment of learned First Appellate Court dated 06.03.2003 in Civil Suit No. 624 of 1991, while



deciding Appeal No. 55 of 09.05.2001 dismissing the suit, filed by the plaintiffs are affirmed. Accordingly, the present appeals stand dismissed.

29. Pending application(s), if any, also stand disposed of.

**(RAMESH KUMARI)**  
**JUDGE**

19.09.2025  
sonia arora

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No