



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
112 **RSA-4702-2019 (O&M)**
Date of decision: 25.02.2025

Kesar Ram

...Appellant(s)

Vs.

Khan Chand & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Yogesh Kumar Aneja, Advocate
for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by the plaintiff against concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff-appellant has been dismissed by Id. Civil Judge, Junior Division, Fazilka vide judgment and decree dated 05.09.2017; and the appeal filed by the appellant thereagainst has also been dismissed by the Id. Additional District Judge, Fazilka vide judgment dated 11.04.2019.

2. Brief facts of the case as set out in the plaint are that the plaintiff and defendant No.1 are brothers, and they are owners of land measuring 82 kanal 8 marla of which the plaintiff is in exclusive possession of land measuring 55 kanal 7 marla (suit land). It is the case of the plaintiff that he became owner of this land by way of family partition that took place 30 years ago. At that time, the plaintiff was in cultivating possession of the suit land. Even though the same was not fertile, however, to maintain peace and brotherhood, plaintiff took the said low-quality land.



However, over time with hardwork and huge expenditure, plaintiff made the suit land fertile. Moreover, with passage of time the neglected village became a town and now it is headquarter of sub-tehsil and schools and other institutions have been established in the town. As such, price of land has risen many times. Thus, greed has crept in the mind of defendant No.1. He connived with defendant No.2 who is Naib Tehsildar of village and entered into conspiracy to dispossess the plaintiff from the land of his exclusive possession. Defendant no.1 has filed an application for partition of land measuring 82 Kanals 8 marlas including the suit land before defendant no.2 and made a request to end the possession of all the parties and to decide the partition application in the way that the suit land which is being cultivated since 30 years and peacefully by the plaintiff falls in the share of defendant no.1. The defendants are aware that the plaintiff is cultivating the suit land since 30 years but they are adamant to ignore the true facts and to grab the land of plaintiff by doing illegal orders and to cause a permanent and irreparable loss to the plaintiff and to benefit the defendant no.1. The land of plaintiff falls in two khewats but the defendant no.1 has filed partition application regarding one khewat. At the time of family partition, the land of all the khewats were divided between the members and the plaintiff was given more land in one khewat and less land in another khewat but now the defendants no. 1 and 2 have ignored this fact which is very important. The defendants have no right to act in the above manner and were repeatedly



requested to abstain from causing any sort of unlawful interference into the peaceful cultivating possession of the plaintiff over the suit land but to no effect. Hence, this suit.

3. Upon notice, the defendant No.1 had appeared and filed written statement contesting the suit on various grounds inter alia submitting that the plaintiff had concealed material factors; and stating that the suit land had not yet been partitioned. Plaintiff and defendant No.1 are in joint possession of the suit land. It was denied that suit land had been partitioned. It was admitted that defendant No.1 had filed an application for partition of land before Naib Tehsildar of the village which was to be decided in accordance with law; present suit was not maintainable and was only filed to harass the defendant No.1. It was further averred that the suit is bad for non-joinder and mis-joinder of necessary parties. The plaintiff is estopped from filing the present suit by his own acts and conduct. It was admitted that plaintiff and defendant no.1 are owners of land measuring 82 Kanals 8 marlas rather they are the co-owners of above said land. It was stated that defendant no.1 and other co-sharers falls within two different khewats i.e. land measuring 24 Kanals in khewat no.1172 and land measuring 58 Kanals 8 marlas in khewat no. 1173. It is averred that in khewat no. 1172 the plaintiff is owner of $\frac{1}{2}$ share and in khewat no.1173 the plaintiff is owner of $\frac{1}{4}$ share but the plaintiff wants to get his entire land from one khewat which is not justifiable as per law. It is further averred that no family partition ever



took place between the co-sharers of the land, so the question to give more land in one khewat and less in other khewat does not arise. It is further averred that nobody is going to dispossess the plaintiff illegally and forcibly. In fact, the plaintiff is pressurizing the defendant no.2 to pass the order in his favour as per his own wish. Otherwise also, if the defendant no.2 passes any illegal order that order is appealable before higher authority in revenue side, the Court has no jurisdiction to try and dispose of this case and after denying other averments, finally prayer for dismissal of the suit was made.

4. Defendant No.2 filed separate written statement resisting the suit by inter alia submitting that plaintiff had no locus or cause of action to file the present suit; the defendant No.2 was Naib Tehsildar of village and the matter pending between plaintiff and defendant No.1 was to be decided as per law and provisions of the Punjab Land Revenue Act. Replications were filed by the plaintiff reasserting submissions made in the plaint and denying those made in the written statements.

5. On the basis of pleadings of the parties, following issues were framed by the learned trial Court on 10.03.2017:-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP.*
- 2. Whether the plaintiff has got no cause of action or locus standi to file the present suit?OPD.*
- 3. Whether the plaintiff has not come to the court with clean hands? OPD.*



4. *Whether Court has got no jurisdiction to try and dispose of the present suit?OPD.*

5. *Whether the present suit is not maintainable in its present form? OPD.*

6. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD.*

7. *Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD.*

8. *Relief.”*

6. Upon appraisal of pleadings and oral & documentary evidence led by the parties, the learned trial Court decided issue No.1 against the plaintiff; issues No.2, 3 and 5 in favour of the defendants; issues No.4, 6 and 7 were decided against the defendants as defendants had failed to show how the Court lacked jurisdiction; etc.; and accordingly, suit of the plaintiff was dismissed by the learned trial Court vide judgment and decree dated 05.09.2017. The appeal filed by the plaintiff was dismissed with costs by the learned Additional District Judge, Fazilka vide judgment dated 11.04.2019. Hence, present second appeal.

7. Learned counsel for the plaintiff assails the impugned judgments and decrees of the learned Courts below by repeatedly asserting that the defendant No.1 has admitted the exclusive possession of the plaintiff upon the suit landbefore the learned Courts below. However, despite going through the entire file in minute detail, learned counsel for the appellant is unable to bear out his above contention.

8. No other argument is made by Id.Counsel for the appellant.



9. I have heard learned Counsel and perused the case file as also the lower court record in minute detail.

10. It has been submitted on behalf of the plaintiff that the defendant no.1 has admitted the exclusive possession of the plaintiff over the suit property. The record reveals that the said contention on behalf of the plaintiff is factually incorrect. On the contrary, a perusal of the written statement dated 03.11.2014 filed by defendant No.1 (available at pages 55 to 67 of the LCR) shows that it has been consistently and categorically pleaded by defendant No.1 that the plaintiff and defendant No.1 are in joint possession of the suit land which has not yet been partitioned between them by any method. In Para 3 of the reply on merits, defendant No.1 has averred as follows:-

“3. That the contents of para No.3 of the plaint are wrong, therefore, denied. It is incorrect that the answering defendant has filed single application for partition of the land measuring 82 Kanals 8 Marlas. Infact the land of the plaintiff, answering defendant and other co- sharers falls within two different khewats i.e. land measuring 24 Kanals in Khewat No.1172 and land measuring 58 Kanals 08 Marlas in khewat No. 1173. It would not be out of place to mention here that in Khewat No.1172 the plaintiff is owner of ½ share and in khwat No.1173 the plaintiff is owner of ¼ share but the plaintiff wants to get his entire land/share from one khewat which is not justifiable as per law and facts. Rest all the contents of this para are totally false, vague and baseless. It all is a made up and concocted story having no legs to stand. The defendant No.2 is legally bound to decide the case as per



facts keeping in view the provisions prescribed in relevant revenue law. It is incorrect and specifically denied that the plaintiff is cultivating his share since 30 years. It is incorrect that the defendant has filed partition application regarding one khewat. No family partition ever took place between the co-sharers of the land so the question to give more land in one khewat and less in other khewat does not arise. Contents of forgoing paragraphs may also be read as part of reply to this para and the same are not being repeated to avoid undue repetition of facts.

4. That the contents of para No.4 of the plaint are wrong, therefore, denied. No body is going to dispossess the plaintiff illegally and forcibly. It all is a made up and concocted story. Infact the plaintiff is pressurizing the defendant No.2 to pass the order in his favour as per his own wish. Otherwise also if the defendant No.2 passes any illegal order that order is appealable before higher authority in revenue side, so this Hon'ble court has no jurisdiction to try and dispose of this case. Contents of forgoing paragraphs may also be read as part of reply to this para and the same are not being repeated to avoid undue repetition of facts.”

(Emphasis added)

11. From a bare reading of the above averments, it is clear that it has nowhere been accepted by defendant No.1 that suit land has been partition, let alone that plaintiff is in exclusive possession of the same.

12. In fact, it has been concurrently found on record that the appellant/plaintiff has failed to prove the alleged partition of the suit



land between the appellant/plaintiff and respondent/defendant No.1 or from predecessor. On the contrary, as per the own evidence of the plaintiff i.e. Jamabandi of suit land for the year 2012-13 (Ex.PA) and khasra girdawari of suit land of Sauni 2013 and Hari 2014 as Ex.PB and Ex.PC respectively; these documents show suit land to be jointly owned and possessed by the plaintiff and defendant No.1. Neither of them have been shown to be in exclusive possession over any part of the suit land. Thus, as per the own evidence of the plaintiff, he is not shown to be in exclusive possession over any portion of the land. Even there is no entry in the Revenue Record regarding alleged partition of the suit land. Moreover, plaintiff during his cross-examination as PW1 has admitted that he does not want to get the suit land partitioned. PW1 has further admitted the khasra girdawari with regard to the entire land being joint. Even PW2 Ishar Ram, PW3 Satnam Dass, PW4 Surjan Singh have admitted the above said facts in their respective cross-examinations. From the above evidence, it was clear that plaintiff was not in exclusive possession over any part of the land measuring 82 kanal 8 marla or even over suit land measuring 55 kanal 7 marla. In fact, as such the suit of the plaintiff was not maintainable.

13. Even the alleged partition of the suit property was not proven on record as PW2 Ishar Ram had himself admitted during his cross-examination that he had not seen the entire joint land of the parties; that he had seen the disputed land only 35 years ago whereafter, he has not



visited the same; that he does not remember the date, month or year of the alleged partition; that no writing was made in respect of the said alleged partition; and that the said alleged partition was never got incorporated in the record of the revenue authorities. From the above facts also, it is proven that the property between the parties was never partitioned. Similar admissions have been made by the remaining plaintiff witnesses. It was accordingly held by learned Courts below that the plaintiff had failed to prove the factum of alleged partition of suit land measuring 55 kanal and 7 marla between the plaintiff and defendant No.1 or even between their predecessor.

14. It was further held that plaintiff had failed to prove any alleged threat to him from the defendants. It was further found that the defendants had never interfered in the suit land; and that the plaintiff had not come to the Court with clean hands. The plaintiff witnesses have admitted during their cross-examination that defendant No.1 had filed partition application before the Revenue Authorities for partition the suit land; which proceedings were adjourned sine die by defendant No.2 upon filing of the present suit. It is also relevant that the plaintiff/PW1 has admitted during his cross-examination that defendants never tried to do illegal act against him at the spot. This fact has been admitted by the remaining prosecution witnesses as well to the effect that no threat was extended by the defendants to the plaintiff. As such, it was correctly held that plaintiff had no cause of action to file the present suit.



15. Relevant findings in this regard are contained in Paras 15, 16 and 17 of the judgment dated 11.04.2019 of the learned lower Appellate Court, which read as follows:-

“15. First of all, appellant stated that a family partition took place between the parties, but appellant had not produced any family partition on the file. Secondly, appellant stated that family partition took place between the parties and suit property came to the share of the appellant. In this respect, appellant had produced on record copy of jamabandi for the year 2012-13 Ex.PA, kharagirdawari for the year 2013-14 as Ex.PB and Ex.PC. From the perusal of revenue record produced by the appellant, it is clear that family partition alleged by the appellant was not incorporated in the revenue record. So, appellant failed to prove that if family partition took place between the parties, then why the same was not incorporated in the revenue record. So, appellant stated that a family partition took place between the parties, but appellant failed to prove the same.

16. Learned counsel for the appellant stated that in the family partition, suit property came to the share of the appellant. He further stated that since the family partition, appellant is in possession of the suit property. He further stated that when appellant is in peaceful possession of the suit property, then the respondents had no right to interfere into the peaceful possession of the appellant. To prove his possession over the suit property, appellant Kesar Ram himself stepped into witness box as PW-1 and reiterated his case and he also brought on record copy of jamabandi for the year 2012-13 as Ex.PA and khasragirdawari for the year 2013-14 as Ex.PB and Ex.PC. Thereafter, appellant examined PW-2 Ishar Ram, PW-3



Satnam Dass and PW-4 Surjan Singh and they stated that appellant is in possession of the suit property. So, although witnesses examined by the appellant stated that appellant is in possession of the suit property, but it is clear that there is a revenue record of the suit property. Appellant had proved copy of jamabandi for the year 2012-13 as Ex. PA and khasragirdawari for the year 2013-14 as Ex.PB and Ex.PC. From the perusal of revenue record, it is clear that appellant failed to prove his exclusive possession on the suit property. So, in the revenue record, appellant and respondent No.1 are recorded as joint owners of the suit property. Although learned counsel for the appellant stated that witnesses examined by the appellant stated that appellant is in exclusive possession of the suit property, but it is clear that there is a written document i.e., revenue record in which it is mentioned that both the parties are in joint possession. So, when there is a written document, then oral statements of witnesses examined by the appellant can not over ride the written documents. So, revenue record produced by appellant himself proves that appellant and respondent No.1 are in joint possession. So, appellant failed to prove his exclusive possession over the suit property. So, when appellant failed to prove his exclusive possession over the suit property, then he is not entitled to injunction.

17. From the above said discussion, it is clear that although appellant stated that 30 years ago a family partition took place between the parties, but appellant failed to prove any family partition. Similarly, appellant failed to prove that if any family partition took place, then why the same was not incorporated in the revenue record. Secondly, appellant stated that he is in possession of the suit property, but the



entire revenue record proves that appellant and respondent No.1 are co sharers and they are in joint possession of the suit property. When appellant failed to prove his exclusive possession over the suit property, then he is not entitled to any injunction and learned lower court had rightly dismissed the suit of appellant. So, from the above said discussion, it is clear that findings of learned lower court on issues no. 1,2,3 & 6 are based on the pleadings of the parties as well as evidence available on the record, so same are affirmed. I have also gone through the findings recorded by learned lower court on issues No.4,6,7 and 8 and findings of the learned lower court on issue No.4,6,7 and 8 are based on the pleadings of the parties as well as evidence led by both the parties and same are affirmed. From perusal of judgment passed by learned lower court, it is clear that learned lower court had passed a well reasoned judgment and there is no illegality or infirmity in the judgment passed by learned lower Court. So, the judgment and decree dated 05.09.2017 passed by learned lower court is upheld.”

16. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings.
17. In view of the above, present appeal is **dismissed**.
18. Pending application(s) if any also stand(s) disposed of.

25.02.2025
Sunena

(Nidhi Gupta)
Judge

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