

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****111****RSA-1819-1992 (O&M)****Date of decision: 07.04.2025****Chuhar Singh (deceased) through his LRs****...Appellant(s)****Vs.****Teja Singh (deceased) through his LRs****..Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. B.S.Sehgal, Advocate for the appellant(s).

Mr. Sunny Saggat, Advocate with
Mr. Omesh Garg, Advocate for the respondent(s).

NIDHI GUPTA, J.

The defendant No.1 is in second appeal against the judgment and decree dated 19.08.1992 passed by the Id. Additional District Judge, Jalandhar; whereby the appeal filed by the plaintiff against the dismissal of his suit seeking permanent injunction restraining the defendants from dispossessing the plaintiff from the Taur/suit land, by the learned trial Court vide judgment and decree dated 07.02.1991, has been allowed.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant No.1'; and respondent No.1 is the 'plaintiff'.

3. The case as pleaded by the plaintiff in the plaint was that he is owner in possession of Taur/land in suit on the basis of Will dated 14.10.1965 executed by Jain Singh, who was owner of the suit land situated in Village Abadi Area. The property was inherited by the plaintiff and his



brother Pavitar Singh after the death of Jain Singh. Jain Singh was their Uncle. It was alleged that the defendant was threatening to dispossess the plaintiff from the suit land. Hence, the present suit was filed on 13.02.1988.

4. Upon notice defendants appeared and filed their written statement in which they have controverted the allegations of the plaintiff. It is stated that the Defendant is owner in possession of the suit property. Jain Singh, plaintiff and Pavitar Singh have got no right, title or interest in the Taur in dispute. Jain Singh had got no right to execute the Will in respect of the suit property. All other assertions have been denied by the defendant. Accordingly, dismissal of the suit was prayed for.

5. On the basis of pleadings of the parties, following issues were framed vide order dated 21.05.1988:-

“1. Whether the plaintiff is owner in possession of the suit property on the basis of will allegedly executed by Jain Singh?

OPP

2. If issue No.1 is not proved, whether defendant No.1 is owner in possession of the suit property? OPP

3. Whether defendant No.2 is owner in possession of the suit property? OPD2.

4. Whether the plaintiff has got no locus standi to file the present suit? OPD

5. Whether the suit as framed is not maintainable? OPD

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

7. Whether the civil court has got no jurisdiction to try this suit? OPD.

8. Relief.”



6. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issue No. 1 against the plaintiff and in favour of the defendants; issues No. 2 and 3 against the defendants as not pressed, issues No. 4 to 7 against the defendants and in favour of the plaintiff as the said issues were not pressed by learned counsel for the parties during arguments; and accordingly, vide judgment and decree dated 07.02.1991, the learned trial Court dismissed the suit of the plaintiff with costs. However, the appeal filed by the plaintiff was allowed by the learned Additional District Judge, Jalandhar vide judgment and decree dated 19.08.1992. Hence, the present second appeal.

7. Learned counsel for the appellant/defendant submits that the learned lower appellate Court was in patent error in reversing the well reasoned judgment of the learned trial Court. The learned lower appellate Court has failed to take into consideration the fact that it was found on record that the plaintiff was not in possession of the suit property. Learned counsel contends that it is well established legal position that unless the plaintiff is able to prove his exclusive possession, decree of permanent injunction cannot be granted.

8. It is further submitted that the Will dated 14.10.1965 has not been proven on record as required under Section 68 of the Evidence Act. The original Will was never proved; and only certified copy was produced to get a finding regarding validity, which is not in accordance with Section 65 of the Evidence Act. Further, the learned lower appellate Court is incorrect in holding that the said Will is not surrounded by suspicious circumstances



as attesting witness of the Will was not known personally to the testator as it has been admitted by attesting witness to the Will that he was not personally known to the testator. Moreover, the Will had not seen the light of the day for more than 18 years. The plaintiff has claimed title to the suit property on the basis of the Will but has filed the present suit for permanent injunction without seeking declaration of title on the basis of the Will. It is settled law that without bigger relief of declaration to the title, smaller relief of permanent injunction cannot be granted.

9. Last but not the least, the plaintiff wants to derive his title and possession of the suit property on the basis of the Will dated 14.10.1965 executed by Jain Singh. However, it was found that Jain Singh is not proved to be owner of the disputed Taur. No evidence oral or documentary proving the title of Jain Singh to the disputed Taur has been brought on record. As such, findings on issue No.1 have been wrongly reversed by the learned lower appellate Court. Learned counsel for the appellant/defendant submits that therefore, the judgment of reversal is based on erroneous presumption, conjectures and surmises and deserves to be set aside.

10. *Per contra*, learned counsel for respondent No.1/plaintiff opposes the prayer made on behalf of the defendant and submits that the learned lower appellate Court has given cogent evidence in reversing the judgment and decree of the trial Court. It is submitted that learned lower appellate Court has categorically noted that no finding has been given by the learned trial Court regarding who is in possession of the property in dispute.



11. Learned counsel for the plaintiff submits that since the death of Jain Singh about 18 years ago, he/plaintiff is in continuous possession of the suit property. It is further submitted that the suit land falls in lal dori. It is further submitted that dispute in the present case is not regarding agricultural land and pertains only qua the house which was mutated in favour of the plaintiff. It is submitted that the defendant in his cross-examination has admitted this fact that the plaintiff was residing with the Jain Singh who was real uncle of the plaintiff and was a bachelor and that the plaintiff served Jain Singh during his lifetime. It is submitted that accordingly, there is no error in the judgment and decree of learned lower appellate Court and the present appeal deserves to be dismissed.

12. No other argument is raised on behalf of the parties.

13. I have heard learned counsel for the parties and perused the case file, as also the lower court records in minute detail.

14. I find no merit in the submissions advanced on behalf of the plaintiff. The learned lower Appellate Court has reversed the findings of the learned trial Court on the ground that the plaintiff had pleaded in his plaint that he had become owner in possession of the suit property vide Will dated 14.10.1965 executed by Jain Singh and that:

“.....since the death of Jain Singh he is in continuous possession of this plot. The defendants have got no concern with the plot and even at present he has placed his manure. Killas are fixed for tethering cattle heads. The defendants are trying to take forcible possession. His residence is at a distance of 40-50 yards from this plot, whereas, Jain Singh was residing over the suit property in Kacha house. The said chhappar had



fallen down after his death. The land measuring 16 kanals 8 marlas belonging to Jain Singh has also been mutated in his name. The witnesses examined by the plaintiff have also stated about the possession of the plaintiff over the suit property. Not only this they have also stated that prior to the possession of Teja Singh, Jain Singh was in possession of the suit property as owner. He was the real uncle of Teja Singh plaintiff. He was bachelor. He was residing with Teja Singh and Teja Singh used to serve him during his lifetime as stated by Ram Singh (PW3) The defendants have not been able to rebut the overwhelming evidence led by the plaintiff regarding his possession as well as ownership.”

15. Accordingly, on the basis of the above reasoning, the learned lower appellate Court allowed the appeal/decreed the suit of the plaintiff.

16. However, the record reveals that the above said facts on the basis of which the learned lower appellate Court has allowed the appeal of the plaintiff, are extraneous to the pleadings. The relevant extract of the entire plaint is reproduced hereunder: -

“Suit for permanent injunction restraining the defendants from dispossessing the plaintiff from the Taur bounded as:

North: Rasta,

South: House of Sawarna son of Khem Singh

East: property of Rammu

West: Rasta situated in V.Haripur Khalsa, teh. Phillaur forcibly, illegally and except with due course of law.

The plaintiff submits as under:-

1. *That plaintiff is owner in possession of taur/land on the base of will dt. 14.10.1965 executed by Jain Singh s/o Pannu r/o V. Haripur Khalsa teh. Phillaur.*



2. *That Jain Singh was owner of this taur and it is situated in V. Abadi area and previously it was used by Jain Singh and after his death this property inherited in the possession of plaintiff and his brother Pawitar Singh and Pawitar Singh is residing in Canada for the last 15 years and being real brother of Pawitar Singh plaintiff is occupying this land taur and watching the interest of his brother.*
3. *That the will executed by Jain Singh was also produced into court and accurated valid that time the present property is left as it is not khasra number and there was no dispute with defendants at that time.*
4. *That now plaintiff also came to know that both defendants also filed one suit of permanent injunction with mutual consent regarding this property taur in dispute.*
5. *That yesterday Chuhar Singh tried to dispossess the plaintiff from this land in dispute but due to timely intervention of some respectables he..... and against Ajit Singh also tried to dispossess the plaintiff but in vain.*
6. *That cause of action arose to the plaintiff and against the defendants on yesterday at V. Haripurkhalsa teh. Phillaur, within jurisdiction of this Hon'ble court and this court has jurisdiction to try and decide this suit.*
7. *That value of the suit for the purpose of court fee and jurisdiction is Rs.130/- on which a court fee of Rs.13/- has been affixed on the plaint.*
8. *It is therefore prayed that a decree of permanent injunction restraining the defendants from dispossessing the plaintiff from the taur fully detailed in the head note of the plaint forcibly illegally and with due course of law be passed i favour of the plaintiff and against the defendants with costs or any other relief which this Hon'ble court deems proper may also be awarded."*



17. A perusal of the plaint reveals that there are absolutely no such pleadings to the above effect. As such, in allowing the appeal of the plaintiff, the learned Lower Appellate Court has gone beyond the pleadings. Clearly, judgment of the learned lower appellate Court is based on a premise beyond pleadings and is, therefore, not sustainable.

18. The only pleaded case in the plaint was that the plaintiff was owner in possession of Taur/suit land on the basis of the Will dated 14.10.1965 executed by Jain Singh, who was stated to be owner of the Taur in question. After the death of Jain Singh, the said suit land was inherited by the plaintiff and his brother. As such, plaintiff claimed to be in possession of the suit Taur. It was nowhere pleaded in the plaint that plaintiff is using the disputed Taur for keeping his manure, tethering his cattle, or parking his tractor and trolley in the suit property. The said statements have been made by the plaintiff and his witnesses only during evidence. As such, in the absence of necessary pleadings, the evidence adduced by the plaintiff went beyond pleadings and, therefore, even the submissions of the witnesses could not have been relied upon.

19. During evidence it was also claimed by the plaintiff that on the basis of Will dated 14.10.1965, mutation in respect of the suit property was sanctioned in favour of the plaintiff and his brother and that the plaintiff has kept manure in this Taur and used it for parking his tractor and trolley. In support, the plaintiff had produced attesting witness PW5 Charan Singh who supported the case of the plaintiff. Charan Singh stated that Khushi Ram Deed Writer had expired and therefore, gave sworn testimony to the



effect that Will dated 14.10.1965 was scribed by Khushi Ram at the instance of Jain Singh. PW5 Charan Singh further deposed that the Will was read over by him to the executant and the marginal witnesses. After admitting the contents of the Will to be correct Jain Singh had put thumb impression on it in the presence of other attesting witnesses. PW5 further deposed that Jain Singh was of sound disposing mind at the time of execution of Will. Plaintiff had also produced PW4 Karam Chand/ who was son of Deed Writer expired Khushi Ram, who had deposed that he knew Khushi Ram; he had seen Khushi Ram signing and writing and that Will in question was scribed by Khushi Ram. PW4 identified handwriting and signature of Khushi Ram on the Will. However, the said case of the plaintiff is belied from the findings of the learned trial Court to the effect that the suit property was in fact, never owned by Jain Singh. The record reveals that except for the bald oral statements of the plaintiff witnesses, no proof was produced by them to prove ownership of Jain Singh over the suit property.

20. Moreover, in the present case, admittedly, the original Will was never produced by the plaintiff. Learned lower Appellate Court has rejected objection of the defendant in this regard by stating that *"The original will was produced in another case Re; Teja Singh Vs. Hira Singh decided by Mr. I.S Bajwa, the then Sub Judge 1st class, Phillaur on 14/12/86. Certified copy of the will is therefore Ex-PW4/A."* Needless to say, the said reason of the learned Lower Appellate Court is untenable.

21. It has also been contended by learned counsel for the plaintiff that the suit property was a house, however, as per the plaint the suit



property was a Taur. The relevant findings of the learned trial Court on issue No.1 are contained in paras 11 and 12 of the judgment and decree dated 07.02.1991, which read as under: -

“11. So far the possession of the plaintiff over the suit property is concerned, it is worth to mention here that no where in the plaint it has been pleaded by the plaintiff that he is keeping his manure, or tethering cattle or parking his tractor trolley in the suit property. No doubt, the plaintiff and his witness have stated like this but my feeling is that such facts should have been categorically pleaded in the plaint and in the absence of the same, this part of the evidence adduced by the plaintiff remains beyond pleadings and no reliance can be placed on such statements of the witnesses.

12. The statements of the witnesses got examined by the plaintiff also do not inspire confidence. It is apparent that the plaintiff has filed the suit for permanent injunction restraining the defendants from dispossessing him from the taur in dispute illegally and forcibly. It is also the case of the plaintiff that he got this taur from Jain Singh on the basis of will dated 14.10.1965. However in his cross-examination, the plaintiff has stated that the house of Jain Singh was in the disputed property and there was also a Chhapar but that Chhapar has been demolished. If there was a house in the property in dispute, it should have been mentioned as such in the plaint but it is not understood as to why this has not been pleaded in the plaint. Charan Singh PW5 is an attesting witness of the will and in his cross examination he has admitted that he did not know Jain Singh nor he was having any intimacy with him. In fact, he was called by one Bahadur Singh for attesting the will of Jain Singh. In such circumstances, even the statement of this witness has become doubtful. He attested the



will executed by a person who was not known to him. In this manner the statement of this witness do not inspire confidence. In view of my above discussion, it is not proved by the plaintiff that he is owner in possession of the suit property on basis of a will alleged to have been executed by Jain Singh. This issue is thus decided against the plaintiff and in favour of the defendants”.

22. Even further, in the absence of any plea to the effect that the plaintiff is in exclusive possession of the suit property, injunction could not have been granted in his favour.

23. Learned counsel for respondent No.1/plaintiff has placed reliance upon the judgment of Hon’ble Supreme Court in “**Ayyavu vs. Prabha and others**”, **Law Finder Doc Id # 2703449**. However, reliance on the said judgment is misplaced as the same is distinguishable on facts and law.

24. In view of the discussion above, the present second regular appeal is **allowed**; and the judgment and decree dated 19.08.1992 passed by the learned Additional District Judge, Jalandhar is hereby set aside.

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

07.04.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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