



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

107

RSA-4640-2019 (O&M)

Date of Decision : 17.01.2025

BHOLA SINGH (DECEASED) THR LRS

.... Appellants

VERSUS

BABU SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.K. Ganga, Advocate for the appellants.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 16.09.2017 passed by the Trial Court and the judgment and decree dated 16.01.2019 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that Bhola Singh filed a civil suit averring in the plaint that he was in cultivating possession of the suit land as fully described in the plaint for the last many years and that the defendant-respondents herein have nothing to do with the same. It was averred in the plaint that the land was acquired by the Consolidation Department vide order dated 28.08.1973 and Mutation No.3020 was entered and attested. It was further the case set up that Babu Singh (defendant-respondent No.1 herein) along with the plaintiff-appellant challenged the order dated 28.08.1973 by filing a Civil Suit No.258/1989 which was decided vide judgment and decree dated 29.07.1997 and Babu Singh and

others were declared as owners as per their shares but the plaintiff-appellant remained in possession of the suit land being legal representative of Mal Singh as possession of the suit land was never taken from him. It was further the case that defendant-respondents have nothing to do with the suit property.

3. Defendant-respondents No.1 to 4 filed their written statement raising various preliminary objections. On merits it was pleaded that father of the plaintiff-appellant alienated the suit land more than his share and therefore the present suit was not maintainable. It was further the case set up that vide rapat roznamcha and vide order dated 28.08.1973 the suit land was acquired by the Consolidation Department qua which mutation No.3020 was entered and attested. Thereafter, defendant-respondent No.1, fathers of defendant-respondents No.2 and 3 and father of defendant-respondents No.3 and 4 filed a civil suit challenging the order dated 28.08.1973, Rapat No.279 and Mutation No.3020 which was decided vide order dated 29.07.1997 in favour of the defendant-respondents. Defendant-respondent No.1 – Surjeet Singh, Gurdev Singh and Mahinder Kaur were declared as owners in possession of the suit land totaling 15 Kanals 14 Marlas and the Rapat and the Mutation were cancelled. The same attained finality inasmuch as the same were not challenged. In the said suit the plaintiff-appellant was also a party and was arrayed as plaintiff No.2(a). As such he had full knowledge of the order.

4. Replication was not filed. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for a decree for permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no *locus standi* and no cause of action to file the present suit ? OPD
4. Relief.
5. The Trial Court dismissed the suit vide judgment and decree dated 16.09.2017. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 16.01.2019. Hence, the present regular second appeal by the plaintiff-appellant.
6. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant has been in possession of the suit property and that despite the suit being decided against the plaintiff-appellant and him not being declared as owner, the plaintiff-appellant still remained in possession.
7. Heard.
8. In the present case in the previous suit for declaration and permanent injunction, which was decided vide judgment and decree dated 29.07.1997, the plaintiff-appellant was arrayed as plaintiff No.2(a). The said suit was partly decreed in favour of plaintiffs No.1, 3 and performa defendants No.9 and 10 therein. However, qua the present plaintiff-appellant the suit was dismissed. The plaintiff-appellant was not found to be owner in possession of the suit property. There is not an iota of evidence on the record

to even remotely suggest that the plaintiff-appellant is in possession of the suit property. It is trite that in a suit for permanent injunction the possession of the plaintiff has to be proved by leading cogent evidence which is woefully missing in the present case. Even before this Court the learned counsel for the plaintiff-appellant has been unable to point towards any cogent and reliable evidence to establish his possession.

9. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.01.2025
Aman Jain

(ALKA SARIN)
JUDGE

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