

**RSA-947-2024 (O&M)**

2025:PHHC:028313



**Sr.No.149**

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

**Reserved on : 26.11.2024**

**Pronounced on : 27.02.2025**

**RSA No.947 of 2024 (O&M)**

**Bant Singh and others**

**...Appellants**

**Versus**

**Gurudwara Sahib and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

**Present:-** Mr. N.C. Kinra, Advocate with  
Ms. Apoorva Kinra, Advocate and  
Mr. Harsh Kindra, Advocate  
for the appellants.

Mr. Veneet Sharma, Advocate  
for the respondent No.1-caveator.

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**PANKAJ JAIN, J.**

Plaintiffs are in second appeal aggrieved of dismissal of suit by Lower Appellate Court reversing the findings and setting aside the judgment and decree passed by the Trial Court. For convenience, the parties are being referred to by their original position in the suit i.e. the appellants as plaintiffs and respondent No.1 as defendant No.3, respondents No.2 to 7 as defendants No.4 to 9, respectively, respondents No.8 & 9 as defendants No.1 & 2, respectively, and respondent No.11 as proforma defendant No.10.

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2. Plaintiffs filed suit seeking decree of permanent injunction restraining defendants No.1 & 2 from carving out any passage through the land measuring 3 bighas 17 biswa, as detailed out in the headnote of the plaint. Further prayer was made seeking decree of possession regarding 10 biswa of land claimed to have been encroached by defendant No.3. Plaintiffs also sought decree of mandatory injunction directing the defendants to remove the encroachment made by them over the *Gairmumkin* passage existing in the revenue record on the Northern side of the land of plaintiffs and proforma defendant No.10. Plaintiffs claimed that they along with proforma defendant No.10 are owners of land measuring 3 bighas 17 biswa. As per demarcation conducted by revenue authorities on 04.04.2012, 10 biswa of land of plaintiffs and proforma defendant No.10 out of Khasra No.16//12 has been encroached upon by defendant No.3 by raising boundary wall and one gate is installed. Defendants No.1 & 2 carved out passage through the suit land without any legal right and defendant No.3 has also illegally encroached upon *Gairmumkin* rasta.

2.1. Defendants No.1 & 2 filed joint written statement. Plaintiffs and proforma defendant No.10 are admitted to be owners of land measuring 3 bigha 17 biswa. Demarcation conducted on 04.04.2012 was denied. It was further claimed that plaintiffs and proforma defendant No.10 got 10 biswa of land from the Panchayat comprised in Khasra No.12//16/1 to resolve dispute regarding 10 biswa of land, claimed to have been encroached by defendant No.3 and they also agreed for usage of part of their land by the villagers.

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2.2. Defendant No.3 filed separate written statement on the lines of written statement filed by defendants No.1 & 2.

2.3. Defendants No.4 to 9 filed joint written statement stating that passage BCDE is an old passage, which is in existence at the spot since time immemorial. The said passage leads to cremation ground situated at the back of Gurudwara Sahib. One of the owners of the land i.e. proforma defendant No.10-Kaka Singh was member Panchayat at the time when outer boundary wall of Gurudwara Sahib was constructed. Demarcation conducted on 04.04.2012 was disputed.

2.4. Suit filed by plaintiffs was put to trial by the Court of First Instance framing following issues:-

1. *Whether the plaintiff is entitled to relief of permanent injunction, as prayed for? OPP*
2. *Whether the plaintiff is entitled to the relief of Possession, as prayed for? OPP*
3. *Whether the plaintiff is entitled to the relief of Mandatory Injunction, as prayed for? OPP*
4. *Whether the plaintiffs have concealed true and material facts from the Court? OPD*
5. *Relief.*

2.5. Trial Court concluded that ownership of plaintiffs and proforma defendant No.10 having been admitted by defendants No.1 & 2 in the written statement, the onus was upon defendants to prove exchange of land as claimed. Exchange of land being in teeth of Rule 5 of the Punjab Village Common Land (Regulation), Rules, 1964 (*hereinafter referred to as 'Rules 1964'*), cannot be relied upon. Trial Court further concluded that from perusal

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of demarcation report Ex.PW3/D along with statement of DW2 Ram Singh, the encroachment is evident. Trial Court thus decreed the suit.

2.6. Dissatisfied, defendants No.3 to 9 preferred appeal. Lower Appellate Court while reversing the findings recorded by Trial Court came to conclusion that as per resolutions Ex.P2 and Ex.P3, the land owned by plaintiffs was exchanged with the shamlat land belonging to Panchayat. Resolutions were signed by proforma defendant No.10-Kaka Singh, who was brother of plaintiff – Nirmal Singh. Land of passage, belonging to plaintiffs, was given to Panchayat in lieu of land comprised in Khasra No.16/1, belonging to Panchayat. Gurudwara Sahib was constructed more than 10 years ago in the presence of all the villagers and Panchayat. As per admission made by PW5 Nirmal Singh, passage is in existence and thus no injunction can be granted. Lower Appellate Court, thus, reversed the findings recorded by Trial Court and dismissed the suit filed by plaintiffs.

3. Mr. Kinra, counsel for the appellants, while assailing the judgment and decree passed by Lower Appellate Court has laid much stress upon absence of approval by the State Government prior to exchange of lands. He submits that approval of the State Government being necessary as per provision contained under Rule 5 of Rules 1964, the same cannot be relied upon to non-suit the plaintiffs. Plaintiffs having been admitted to be owners in possession of the suit land are entitled for decree of possession. Lower Appellate Court has erred in law in ignoring the basic principle of law that there cannot be acquiescence against the statute. He thus submits that

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judgment and decree passed by Lower Appellate Court needs to be set aside and the judgment and decree passed by Trial Court be maintained.

4. *Per contra*, counsel for respondent No.1 Mr. Sharma submits that there is no challenge to the exchange in the entire suit. Suit has been filed seeking injunction against villagers from using passage which is already in existence. As per statement made by PW5 Nirmal Singh, the villagers are already using the passage. Resolutions were signed by proforma defendant No.10, who was member Panchayat of village Paragpur at that time. He thus submits that Lower Appellate Court has rightly dismissed the suit filed by plaintiffs.

5. I have heard counsels for the parties and carefully gone through records of the case.

6. So far as ownership of plaintiffs is concerned, the same has not been disputed. Defendants No.1 & 2 relied upon resolutions Ex.P2 and Ex.P3 whereby the suit land was agreed to be exchanged by plaintiffs. One of the owners of the land namely Kaka Singh-proforma defendant No.10 was one of the signatories to the resolutions. The relevant extracts of two resolutions read as under:-

***Resolution Ex.P2***

*“Today on 25.04.2011, meeting of Gram Sabha Paragpur was convened and presided over by Sarpanch Sh. Jaswant Singh at Dharamshala at 10 AM. Corum is complete. It was resolved as under:-*

*It was resolved that Gram Panchayat in order to resolve difficulty in the approached passages to shamlat land has exchanged some shamlat land with the private owned land.*





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7. There is no evidence on record as to whether the aforesaid resolutions proposed by Gram Panchayat have been approved or not. However, from the testimony of PW5 Nirmal Singh, it is evident that land owned by plaintiffs was handed over to Panchayat and the passage along with boundary wall of Gurudwara Sahib was being used by villagers at the spot without any objection by the plaintiffs. No case was filed by plaintiffs against the Gurudwara Sahib regarding construction of boundary wall on the land which was proposed to be exchanged with Gram Panchayat on the basis of two resolutions.

8. Counsel for the appellants is right in contending that in terms of Rule 5 of Rules 1964 prior approval of the Government is necessary to effect exchange. Reliance is being placed upon ratio of law laid down in ***Hukam Chand and others vs. State of Haryana and others, 2012 (67) R.C.R. (Civil) 913***, wherein the Division Bench observed as under:-

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*9. Admittedly, the land, in dispute, was, reserved as a path during consolidation and by its very nature, is to be used by inhabitants of the village. A Gram Panchayat may alter the user of its land and recommend exchange only after following the procedure prescribed by Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964, as applicable to the State of Haryana (hereinafter referred to as the '1964 Rules'), which reads as follow:-*

*"[5. Exchange of land. sections 5 and 15(2) (f): A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may, with*



*the prior approval of the State Government, transfer any land in shamilat deh by exchange with the land of an equivalent value to be determined by the Deputy Commissioner in whose jurisdiction the land is situate:*

*Provided that State Government shall not accord any approval in cases which are not received through the Deputy Commissioner concerned:*

*Provided further that for the purpose of allotment of residential plots to the eligible families identified under the scheme approved by the State Government, to allot house-sites to the Scheduled Castes' families and the families living below poverty line, the concerned Deputy Commissioner or Sub-Divisional Officer (Civil), as may be authorised by the State Government, shall be competent to accord approval for transfer any land in shamilat deh, by way of exchange, with the land of equivalent value.]"*

*10. Before a Gram Panchayat forwards a proposal for exchange of its land, the Gram Panchayat is required to form an opinion that the exchange is necessary for benefit of inhabitants of the village. An exchange of Gram Panchayat land presupposes the existence of two elements: - (a) necessary to do so, and (b) for benefit of inhabitants of the village. The Financial Commissioner rightly held that both essential elements of a valid exchange are absent.*

*11. The Gram Panchayat passed resolution dated 18.02.1986, agreeing to exchange the land of a path with land belonging to the petitioners but without recording that the exchange is for any benefit of inhabitants of the village. The Gram Panchayat implemented the exchange post-haste and handed over the path to the petitioners who constructed their houses apparently for the reason that the petitioners had already encroached upon the land. The Gram Panchayat did not bother to apply for approval as required by Rule 5 of the 1964 Rules. After a long drawn out legal battle regarding eviction orders, warrants of possession etc., the matter was eventually placed before the Financial*



*Commissioner to consider whether approval should be granted to this exchange. The Financial Commissioner has obtained reports from various officers and after considering these reports, held that the exchange cannot be approved as it is not for benefit of inhabitants of the village. A relevant extract from the order passed by the Financial Commissioner, reads as follows: -*

*"5. After hearing the rival contentions of both the parties and going through the record available on file, the Director Panchayat has recommended that the resolution dated 18.02.1986 passed by the Gram Sabha Asadpur and subsequent proceedings for eviction of the applicants from the land bearing khasra nos.114 and 151 reveal that the applicants had encroached upon this passage much prior to the passing of resolution dated 18.02.1986. It has also been mentioned in the said resolution that Shri Duli Chand (father of the complainant) has not agreed to the proposal for exchange as this passage bearing nos.114 and 151 is leading only to his land. xxx xxx xxx. But in the present case the land proposed to be exchanged is earmarked during the consolidation proceedings for passage. The resolution dated 18.02.1986 passed by the Gram Sabha or the resolution dated 15.12.2002 does not suggest as to how the proposed exchange is for the benefit of inhabitants of the village. Moreover, a passage cared out during the consolidation proceedings, until and unless it has become redundant, cannot be obliterated, especially when no alternative revenue recorded passage is available to the complainant and the passage proposed to be given in exchange to the Gram Panchayat would put the complainant to inconvenience. xxx xxx xxx.*

*7. After considering the proposal, the Governor of Haryana is pleased not to accord approval to the Gram Panchayat Asadpur for exchange of the proposed lands.*

*8. Hence, the proposal for exchange of Panchayat land measuring 16 marla falling in khasra Nos.114 and 151 with the private land measuring 1 kanal 3 marla (owned by respondents No.3 to 11 of Civil Writ Petition No.1348 of 2007) resolved by Gram Panchayat Asadpur vide its resolution dated 15.12.2002 and 05.03.2003 and recommended by the Deputy Commissioner, Sonapat is hereby rejected."*

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9. The resolutions with respect to exchange have been passed by Gram Panchayat as well as Gram Sabha. In the suit filed by plaintiffs, there is no challenge to the aforesaid resolutions. Rather plaintiffs concealed the factum of resolutions qua exchange of land with Panchayat. The Panchayat as well as Gram Sabha have passed resolutions with respect to pressing need of the villagers for exchange of land. It is also an admitted case of plaintiffs that land has been utilized by the Panchayat without there being any objections from the plaintiffs. Rather plaintiffs were party through proforma defendant No.10 to the resolutions qua exchange. In the absence of there being any challenge to resolutions effecting exchange and without offering to return land given by Panchayat in exchange, this Court finds that the present suit seeking injunction *qua* land was not maintainable.

10. In view thereof, this Court finds that the suit filed by plaintiffs deserves to be dismissed. The decree passed by the Lower Appellate Court needs to be maintained though for different reasons. ***Ordered accordingly.***  
No costs.

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

**( PANKAJ JAIN )**  
**JUDGE**

**February 27, 2025**  
*ashish*

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