



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

109-1

**RSA-2571-2013 (O&M)
Date of decision : 02.09.2025**

Surinder Kumari Pathak and others

..... Appellants

versus

Ram Nath

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vinay Puri, Advocate
for the appellants.

Mr. Pankaj Sharma, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal. For convenience, parties hereinafter are referred to by their original position before the Court of the First Instance i.e. the appellant as defendant and respondent as plaintiff.

2. Plaintiff filed suit seeking a decree of possession with respect to land measuring 07 marlas alleging encroachment at the hands of defendant.

3. Suit was contested by the defendant claiming that there is another *lis* pending before the Courts wherein the plaintiff has been restrained from dispossessing the defendant. It was further claimed that there is no encroachment made by the defendant upon the land comprising Khasra numbers 162R and 164R.

4. The suit filed by the plaintiff was put to trial by the Court of First instance framing following issues:-



- “(1) Whether the plaintiff is entitled to possession of land as prayed for? OPP*
- (2) Whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for? OPP*
- (3) Whether the suit is not maintainable in its present form? OPD*
- (4) Whether the plaintiff has no locus standi to file the present suit? OPD*
- (5) Relief.”*

5. Rattan Singh-Kanungo was appointed as Local Commissioner. He submitted his report and stepped into the witness box as PW2.

6. Plaintiff in order to prove his ownership over the suit land, tendered record of rights in form of jamabandi for the year 2002-03 as Ex.P1. The Court of the First Instance, after analyzing the evidence threadbare, came to the conclusion that the plaintiff having proved his ownership and the encroachment made by defendant proved by the report of the Local Commissioner, plaintiff is entitled for decree of possession qua land measuring 07 marlas comprising Khasra number 10//18//1. Further decree was passed against the defendant restraining him from changing the nature of the land in question. The aforesaid findings recorded by the Court of the First Instance stand affirmed by the Lower Appellate Court.

7. Counsel for the appellants-defendants has assailed the findings recorded by the Courts below. He submits that the falsity of the claim of the plaintiff stands unleashed. In plaint, it was admitted that the defendant came in possession and encroached upon the land six months back, whereas in his testimony, he admitted possession of defendant since 1983. He submits that the plaintiff having not approached the Court with clean hands, the Courts below ought not have decreed the



suit filed by him. Further submits that the Courts below erred in relying upon the report of Rattan Singh Local Commissioner PW2, which was without notice to the defendant.

8. *Per contra*, Mr. Sharma submits that the ownership of the plaintiff over the suit land stands proved. Revenue record brought on record has remained unrebutted. So far as encroachment made by the defendant is concerned, the same is not only proved by the report of the Local Commissioner but stands admitted by the defendant. A suggestion was put to the plaintiff that the defendants are in possession of the suit land since the year 1983 and thereafter, defendant even tried to raise plea of having become owner by way of adverse possession. Mr. Sharma further submits that pure findings of fact have been recorded by the Courts below based upon cogent piece of evidence which need not be disturbed as re-appreciation of the evidence for the third time would be beyond the scope of regular second appeal.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. Along with the appeal, an application has been filed under Order XLI Rule 27 CPC, wherein the appellant seeks presumption to lead additional evidence. By way of additional evidence, the appellant wants to incorporate the plea of having purchased the suit land. Para 2 thereof reads as under:-

“That the brief facts leading to the filing of the present application is that the land in dispute is under the ownership and possession of the Applicants/Appellants for more than 30-40 years. The land in dispute is an ancestral land of the Applicants/Appellants and under a family settlement the particular share was given to the Applicants/Appellants.



Somewhere in the year 1982 the Respondent purchased the land i.e. Khasra No. 10R/18/1 (1-10) situated in Khewat No. 284, Khatauni No. 321 in Village Bassowal, Had Bast No. 302, Tehsil Anandpur Sahib, District Ropar, Punjab. From the very beginning he remained in possession in a particular land and was very much satisfied with the area. However, the Respondent somewhere in April 2007 started threatening to dispossess the Applicants/Appellants and to raise illegal construction with the help of the police officials. The Applicants/Appellants (at that time Shri Shankar Dass filed a Suit for Permanent Injunction in the Court of Shri Pushwinder Singh, PCS, Additional Civil Judge, Senior Division, Anandpur Sahib bearing Civil Suit No. 177/12/5/2007 which was decided on 8/10/2010 and the Suit was decreed in favour of the Applicants/Appellants.”

11. In the considered opinion of this Court, the aforesaid averment also amounts to admission on part of the defendant with respect to encroachment over the suit land.

12. Since this Court has already restored the findings recorded by the Court below, this Court does not find any merit in the application, filed under Order XLI Rule 27 CPC as the evidence sought to be produced on record has no bearing on the merits of the case.

13. Plaintiff in order to succeed in a suit for possession, was required to prove his valid title. Jamabandis for the years 2001-02, 2003-04 have come on record as exhibit P1 and exhibit P2. Jamabandi being record of rights have presumption of truth attached thereto. In the absence of there being any cogent piece of evidence led by the defendant to rebut the presumption, it can be safely concluded that the plaintiff has been rightly held by the Courts below to be owner of the suit property.



14. So far as encroachment made by the defendant is concerned, even if the report made by the Local Commissioner is not considered for the sake of argument, defendants themselves suggested to the plaintiff that they are in possession of the suit property. That being the case, it does not lie in the mouth of defendant before this Court to claim that the encroachment at their hands is not proved.

15. Accordingly this Court finds no merit in the present appeal, the same is ordered to be dismissed.

16. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

02.09.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No