



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

**RSA-2494-1994 (O&M) and
XOBS-16-C-1995**

Date of decision : 09.01.2025

Bhajan Singh & ors. Appellants

versus

Shri Gursharan Singh Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Munish Gupta, Advocate
for the appellants.

Mr. J.S.Bhatia, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1 Defendants are in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendants and the respondent as plaintiff.

2 Plaintiff filed suit seeking decree of possession of the property as marked as BCDKFGHI in the site plan attached with the head of the plaint. Plaintiff further sought decree of mandatory injunction seeking mandate against the defendants to remove wall mark LMA and further sought decree of permanent injunction in form of restrain against the defendants from dispossessing or causing to dispossess the plaintiff from the site mark as EDKF as per the site plan.

All the parties to the *lis* trace their title to the estate through original owner Bishan Singh. The property left by Bishan Singh is stated to have



been partitioned among Jumait Singh, Keshar Singh, Naurang Singh, Bakhtawar Singh and Natha Singh vide writing dated 22 Assu, 1969, Samat. As per the said writing the property was divided into two portions leaving street of 9 feet in between. The said street was meant for common user of the parties. There is no dispute with respect to the portion on the southern side of the said street. It is claimed that out of the northern portion land measuring $2\frac{2}{3}$ biswas fell to the share of Natha Singh and remaining portion marked as ABIJ came to share of Naurang Singh. Share of Naurang Singh was inherited by Dayal Singh and his brother Atma Singh which presently is in possession of defendants No.1 to 4.

3 Plaintiffs claimed that share of Natha Singh was sold to Yusuf. After Yusuf who migrated to Pakistan 2 bighas of land purchased by Yusuf was declared as evacuee property. Plaintiff claims to have purchased the same in an open auction dated 08.12.1961 for consideration of Rs.140/-. Sale certificate was issued on 30.12.1961. It is claimed that left over portion ad-measuring almost $2\frac{2}{3}$ biswas marked as BCHI was later on purchased by plaintiff vide sale deed dated 14.05.1968. Thus plaintiff became absolute owner of the property marked as BCDEFGHI. Defendants encroached upon part thereof by constructing wall marked as AHL in the site plan. Plaintiff thus sought decree of possession and mandatory injunction by removal of the aforesaid wall with the consequential relief of permanent injunction *qua* the aforesaid property.



4 Suit was contested by the defendants denying the title of the plaintiff *qua* 2/3rd biswas. Defendants claim that they purchased property of Atma Singh and Naurang Singh for a consideration of Rs.2,000/- vide sale deed dated 09.11.1982. On the basis of the pleadings Court of the first instance framed the following issues :-

- “(1) Whether the plaintiff is owner of the suit property? OPP.*
- (2) Whether the plaintiff has got no locus standi to file the suit?OPD.*
- (3) Whether the suit has been properly valued for the purpose of court fee & jurisdiction?OPP.*
- (4) whether the suit is barred by the principle of res-judicata?OPD.*
- (5) Whether the proceedings in the suit are liable to be stayed u/s 10 CPC; OPD*
- (6) Whether the defendants have made construction in the disputed property? If so to what effect?OPD.*
- (7) Whether the defendants had purchased the disputed property on 9.11.82 from Atma Singh & Naurang Singh? If so its effect? OPD.*
- (8) Whether the plaintiff is entitled to the Possession of the suit property?OPP.*
- (9) Whether the plaintiff is entitled to the grant of permanent injunction?OPP.*
- (10) Whether the plaintiff is entitled to the mandatory injunction?OPP*
- (11) Relief.”*

5 Analyzing the evidence threadbare, Court of first instance determined issue No.1 in favour of the plaintiff holding that the plaintiff successfully proved the sale certificate as well as sale deed and is thus owner of the property in dispute. Issue No.2 was consequently decided in favour of the plaintiff holding that he being rightful owner is entitled



to possession there upon. While deciding issue Nos.6 and 10 Court of first instance relied upon the site plan Exhibit P-6 and held plaintiff entitled to the decree of mandatory injunction and ordered defendants to remove wall LMA.

6 Suit of the plaintiff was ordered to be decreed.

7 In appeal preferred by the defendants Lower Appellate Court maintained findings on material issues, however, came to the conclusion that as per the report of the Local Commissioner appointed by the Lower Appellate Court the width of the street was found to be 9 feet towards western side and at the end of eastern side it got reduced to 8 feet. Both the parties having constructed walls on either sides of the passage shows that the walls were raised without there being any objection from either side. In view of aforesaid finding though Lower Appellate Court maintained the finding but held that the plaintiff was not entitled for decree of mandatory injunction in form of a mandate against the defendants for removing wall LMA as depicted in site plan Ex.P-6.

8 Mr. Munish Gupta, Advocate for the defendants submits that the Courts below fell in error in not considering the sale deed dated 09.11.1982 executed by Atma Singh and Naurang Singh in favour of the defendants. Once the aforesaid sale deed is taken into consideration the findings with respect to issue No.1 are required to be reversed. He thus prays for setting aside of the judgment and decree passed by the Courts below.



9 *Per contra*, Mr. G.S.Bhatia, Advocate for the plaintiff submits that it has come on record and is not matter of dispute that land measuring 2.2/3 biswas on the northern side which is in dispute was owned by Natha Singh. He disposed off 2 biswas in favour of Yusuf. After Yusuf migrated to Pakistan on the partition of the Country, the land became evacuee property. The same was purchased by the plaintiff for a consideration of Rs.140/- in an open auction. Sale certificate dated 30.12.1961 stands proved. So far as remaining land measuring 2/3rd Biswas is concerned sale deed dated 14.05.1968 stands fully proved. Thus pure finding of facts have been recorded by the Courts below after appreciating the entire evidence. It being a regular second appeal Court cannot be asked to re-appreciate evidence on record.

10 I have heard learned counsel for the parties and have gone through the records of the case.

11 Mr. Munish Gupta, Advocate for the defendants is not in position to dispute that the plaintiff has fully proved sale certificate as well as the sale deed dated 1968. Even if the sale deed propounded by the defendants dated 1982 is taken into consideration the same would not have any effect so far as the right, title and interest of the plaintiff with respect to the property measuring 2.2/3 biswas owned by Natha Singh is concerned. The aforesaid findings having not been proved to be perverse or illegal in any manner needs to be maintained.

12 So far as the decree of mandatory injunction is concerned, though the plaintiff has preferred cross objection, in the considered



opinion of this Court, Mr. G.S.Bhatia, Advocate for the plaintiff is not in a position to dispute that the walls were raised by either parties without there being any hue and cry or objection from the either side. It has been proved on record that the street at the end has been reduced to 8 feet but there is nothing on record to suggest as to which party has encroached leading to reduction of 1 feet in the width of the street.

13 In view thereof, this Court does not find any reason to interfere in well reasoned findings recorded by the Lower Appellate Court.

14 Resultantly, present appeal as well as the cross objections are dismissed. The judgment and decree passed by the Lower Appellate Court is maintained.

(PANKAJ JAIN)
JUDGE

09.01.2025

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No