



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

108

RSA-831-1999

Date of decision : 19.02.2025

Nasib Chand

..... Appellant

versus

Mehru and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Dinesh Nagar, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal.
2. Plaintiff filed suit seeking decree of declaration to the effect that he is owner in possession of one third share out of land measuring 6 marlas, comprised in Khasra No.74-Min, Khewat Khatauni No.91/141, situated at Village Sherpur Hadbast No.219, Tehsil & District Hoshiapur, as per jamabandi for the year 1988-89.
3. Defendants contested the suit. Defendant No.1 in his written statement claimed to be in actual physical possession of the suit property. It was further claimed neither the plaintiff nor defendant No.2 has any right, title or interest in the same. It was denied that the plaintiff nor defendant No.2 are co-sharers with defendant No.1 in the suit property.
4. Court of the first instance put suit filed by the plaintiff to trial framing following issues:-

“1) Whether the plaintiff is owner in possession of the suit



- property? OPP.*
- 2) *Whether the plaintiff is entitled to the declaration as prayed for? OPP.*
 - 3) *Whether the suit is not maintainable in the present form? OPD.*
 - 4) *Whether the plaintiff has no locus-standi to file the present suit? OPD.*
 - 5) *Whether the suit property is not correctly describe d? OPD.*
 - 6) *Relief.”*

5. Even though, Trial Court held that the plaintiff failed to prove his ownership, but still granted him decree of joint possession. Defendant No.1 preferred appeal. Lower Appellate Court reversed the findings recorded by the Trial Court observing as under:-

“The trial Court has granted a decree to the plaintiff to the effect that the was entitled to joint possession in respect of Khasra No.74 measuring 6 marlas, whereas it is not the suit of the plaintiff. The suit of the plaintiff is for declaration that he was owner in possession of 1/3rd share out of the land measuring 6 marlas. The learned trial court has itself observed that the plaintiff has failed to prove his ownership and has also observed that the plaintiff has failed to prove the description of the property for which the suit has been filed. It is very strange that in these circumstances, trial Court has decreed the suit for joint possession. The present suit is a suit for declaration simpliciter and no consequential relief has been claimed by the plaintiff and such a suit was not maintainable. The plaintiff while appearing in the witness box has stated that he was in possession of 2 marlas of land out of the disputed property, but as rightly observed by the learned trial court, the plaintiff has failed to prove as to what portion he was possessing The plaintiff has also stated that he was serving in Military and had recently settled in the village. Therefore, it will be presume d that he was not in possession of any part of the suit property. The plaintiff has failed to prove his possession over the suit land and he has sought declaration of ownership without impleading the Gram



Panchayat, who has been recorded as owner in the revenue records. The present suit is also not maintainable for declaration of title without impleading the owner of the suit land. In these circumstances, the trial Court could not pass any decree in favour of the plaintiff particularly when the relief sought has not been prayed by him.”

6. Counsel for the appellant does not dispute that per revenue record, it is Gram Panchayat which has been recorded as owner of the suit property. That being the situation, this Court finds that the Lower Appellate Court has rightly non-suited the plaintiff and has dismissed the suit seeking declaration to the effect that plaintiff is owner in possession of the part of the suit property, as he failed to prove his ownership.

7. Finding no merit in the present appeal, the same is dismissed.

(PANKAJ JAIN)
JUDGE

19.02.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No