



RSA-2972-2012 (O&M)

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

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**RSA-2972-2012 (O&M)
Reserved on:-09.09.2025
Date of Decision : 10.09.2025**

Chain Singh and Others

....Appellants

VERSUS

Swaran Lal and Another

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Harminder Singh, Advocate for the appellants.

Mr. Deepak Arora, Advocate for the respondents.

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MANDEEP PANNU,J.

1. The present Regular Second Appeal has been filed by the defendants—appellants against the judgment and decree dated 13.12.2011 passed by the learned Additional District Judge, Fast Track Court, Gurdaspur, whereby the judgment and decree dated 30.07.2009 of the learned trial Court has been reversed.

Brief Facts

2. Brief facts of the present case are that the plaintiff—Swaran Lal filed a suit for permanent injunction restraining the defendants from carving out any passage or rasta in the suit land measuring 7 Kanals 7 Marlas comprised in Khewat No. 171, Khatuni No. 295/1, Rectangle No. 24, Killa No. 12 (7-7) situated in Village Bhaini Bangar, H.B No.530, Tehsil and District Gurdaspur. It was pleaded that he along with his co-sharers Kewal Krishan, Ashok Kumar, Sawarno Devi, Bimla Devi and Smt. Laj Wanti was the owner and in cultivating possession of the said land. According to the plaintiff, the defendants whose land abuts the suit



property had no right, title or interest therein, yet they were threatening to forcibly interfere in his possession and were adamant to carve out a passage.

3. Upon notice, defendants No. 1 to 4 contested the suit by way of joint written statement, whereas the suit against defendant No. 5 was dismissed as withdrawn. In the written statement, the defendants raised preliminary objections that the plaintiff had not approached the Court with clean hands. On merits, they admitted the ownership of the plaintiff but pleaded that there exists a passage of 2 karams wide on the western side of the land in dispute which leads to Ahata Chah and further to their land. The passage, according to them, runs through Khewat No. 254, Khatauni No. 414, Rectangle No. 24, Killa No. 9/1 (6-18), Khewat No. 407, Khatauni No. 670, Rectangle No. 24, Killa No. 26 (1-2). It was asserted that this passage was in existence since consolidation, duly shown in the revenue record, and its demarcation was carried out on 17.11.2004 by the revenue authorities. The defendants pleaded that after the said demarcation, the plaintiff demolished the demarcation pillars and encroached upon the passage.

4. Defendants No. 1 to 3 also filed a counter-claim seeking mandatory injunction directing the plaintiff to remove the encroachment made on the passage as shown in blue colour in the site plan and to restrain him from obstructing their use thereof.

5. The plaintiff filed reply to the counter-claim denying the existence of any such rasta. He denied that any demarcation was conducted by the revenue authorities and also denied encroachment on any passage. He raised preliminary objections regarding maintainability, limitation and non-joinder of necessary parties.



6. From the pleadings of the parties, the following issues were framed:
1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
 2. Whether the suit is not maintainable in the present form? OPD
 3. Whether the plaintiff has not come to the court with clean hands? If so, its effect? OPD
 4. Whether the defendants are entitled to the decree of mandatory injunction on the ground mentioned in the counter claim? OPD
 5. Whether the counter claim is not maintainable in the present form? OPD
 6. Whether the counter claim is barred by time? OPD
 7. Whether the counter claim is bad for non-joinder of necessary parties? OPP
 8. Relief.

7. The plaintiff examined himself as PW-1, Ravinder Singh as PW-2 and Bawa Singh as PW-3, and then closed his evidence.

8. On the other hand, the defendants examined Ranjit Singh, Halqa Patwari as DW-1, J.S. Dhanjal, Draftsman as DW-2, and defendant Chain Singh himself as DW-3. They also tendered into evidence Akash Sajra Ex. D1, site plan Ex.D2, demarcation report Ex.D3, Jamabandi Ex. D4 and Ex. D5, and Musavi/Aks Shajra Mark A.

Finding of the trial Court

9. The learned trial Court, upon appreciation of the evidence, held that a passage of 2 karams wide existed between Khasra Nos. 11 and 12 leading to Killa

No. 26 and thereafter to Ahata Chah, adjoining the land of the defendants. It was



further noticed that the plaintiff himself admitted in cross-examination that the passage leads upto Killa No. 19. On the basis of the oral as well as documentary evidence, the trial court concluded that the existence of the passage was duly proved, while the plaintiff failed to establish otherwise. The suit of the plaintiff was, accordingly, dismissed with costs, whereas the counter claim of the defendants was decreed and a decree sheet prepared accordingly on 30.07.2009.

Findings of the Lower Appellate Court

10. The plaintiff preferred an appeal, which was accepted by the learned Lower Appellate Court on 13.12.2011. The Appellate Court held that although the plaintiff and his co-sharers were proved to be in joint possession of the land as per Jamabandi Ex. P1 and Khasra Girdawari Ex. P2, the defendants had failed to prove the khasra number of the alleged passage. It was observed that during consolidation, all passages left for public use were assigned khasra numbers and duly entered in the field book. Since the defendants had failed to bring any such material on record, the court held that no passage existed as alleged by them. Consequently, the judgment of the trial court was set aside, the suit of the plaintiff was decreed, and the counter claim of the defendants was dismissed.

11. Aggrieved, the present Regular Second Appeal has been filed by the defendants—appellants.

12. Notice of the appeal was issued and respondents appeared through their counsel to contest the same.

Submissions of the learned counsel for the parties

13. Learned counsel for the appellants argued that the learned Lower Appellate Court erred in law by ignoring the documentary and oral evidence on record. It was submitted that the dispute was never about the ownership of the

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plaintiff, which was admitted, but only regarding the existence of the passage of 2 karams wide between Khasra Nos. 11 and 12. The defendants had led cogent evidence by examining DW-1 Ranjit Singh, Halqa Patwari, DW-2 J.S. Dhanjal, Draftsman, and DW-3 Chain Singh, who had duly proved Akash Sajra Ex. D1, site plan Ex.D2, demarcation report Ex.D3, Jamabandi Ex.D4 and Ex. D5. Further, Musavi/Akash Sajra Mark 'A' clearly showed the passage between Killa Nos. 11/3 and 12 leading to Ahata Chah. The Appellate Court illegally brushed aside this material evidence by observing that the khasra number of the passage had not been proved, despite Musavi showing khasra Nos. 284 and 285 between Killa Nos. 19 and 20 and Killa Nos. 11/3 and 12. It was contended that Musavi is the basic document on the basis of which field book is prepared, and though not exhibited, it could always be referred to for collateral purposes.

14. On the other hand, learned counsel for the respondents supported the judgment of the learned Appellate Court and argued that no passage ever existed through the suit land. It was submitted that the defendants fabricated documents later to carve out a rasta and failed to produce any khasra number of such alleged passage. The counter claim itself was self-contradictory, as the defendants pleaded that there was no other passage except the disputed one, but had not explained as to how they were approaching their land for the last several years during the pendency of the litigation. It was further argued that there did exist another passage which the defendants were using, and no such rasta existed as claimed in the site plan filed by them, which was vague and not connected to the property in dispute.

Findings of this Court

15. I have heard learned counsel for the parties and carefully examined the record. This Court is of the considered view that the findings recorded by the



learned first appellate court are unsustainable. The trial court had, on the basis of oral as well as documentary evidence including Akash Sajra Ex. D1, site plan Ex. D2, demarcation report Ex. D3, clearly established that a passage 2 karams wide existed between Khasra Nos. 11 and 12 leading to Killa No. 26 and thereafter to Ahata Chah. The demarcation report dated 17.11.2004 (Ex. D3), prepared by the revenue authorities in the presence of the parties, specifically recorded existence of the said passage and demarcated it on the spot. The plaintiff himself, in cross-examination, admitted that the passage leads upto Killa No. 19. The Musavi/Akash Sajra produced on record also shows khasra Nos. 284, 285 and 286 earmarked as passage.

16. The learned Appellate Court discarded this evidence on a hyper-technical ground that khasra number was not mentioned, whereas the very revenue record relied upon by the defendants including the demarcation report clearly showed the existence of passage. The learned Appellate Court further overlooked the material fact that the present suit was filed on 20.11.2004 immediately after three days of demarcation of land which was conducted on 17.11.2004 which shows the malafide on the part of plaintiff.

17. Once the existence of passage stood established by reliable documentary and oral evidence, supported by official demarcation proceedings, the plaintiff was not entitled to injunction against the rightful use thereof by the defendants. The trial court had rightly dismissed the plaintiff's suit and decreed the counter claim. The findings of the first appellate court, being based on conjectures and assumptions while ignoring cogent documentary evidence including the demarcation report, cannot be sustained.

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18. In view of the foregoing discussion, the judgment and decree dated 13.12.2011 passed by the learned Additional District Judge, Fast Track Court, Gurdaspur, is set aside. The judgment and decree dated 30.07.2009 passed by the learned trial Court is restored. Accordingly, the suit of the plaintiff stands dismissed with costs, while the counter claim of the defendants stands decreed. Decree sheet be prepared accordingly.

19. The present Regular Second Appeal is allowed in the afore-said terms.

20. Pending application(s), if any, also stands disposed of.

September 10, 2025
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(MANDEEP PANNU)
JUDGE

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