



RSA-608-2023 (O&M)

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

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RSA-608-2023 (O&M)

Date of decision: 14.07.2026

Shivraj

....Appellant

Versus

Ashok and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Jaivir Yadav, Sr. Advocate, with
Mr. Aman Gautam, Advocate, for the appellant.

Mr. Armaan Gagneja, Advocate, for respondent No.3.

HARSH BUNGER J. (ORAL)

1. For convenience, the parties herein are being addressed as per their status in the original suit.

1.1. This is the plaintiff's second appeal challenging judgment and decree dated 13.10.2016 passed by the learned Civil Judge (Junior Division), Jhajjar, whereby the suit filed by plaintiff for mandatory as well as permanent injunction, has been dismissed.

1.2. A further challenge has been laid to the judgment and decree dated 15.10.2022 passed by the learned Additional District Judge, Jhajjar, whereby the appeal preferred by the plaintiff against the aforesaid judgment and decree dated 13.10.2016 passed by the learned trial Court, has also been dismissed.

2. Briefly, the plaintiff (Shivraj) filed a suit for mandatory as well as permanent injunction on the plea that he is owner in possession of the plot



marked ABCD (shown in green colour in the site plan attached with the plaint), on the basis of registered sale deed dated 15.04.1998. It was pleaded that the said plot is comprised in khewat No.260, khasra No.277. It was stated that the total area of khasra No.277 is 2 kanal 9 marla, whereas the property in question is measuring 1 kanal 8 marla (hereinafter referred to as the “suit property”) and is situated in the northern side of khasra No.277. The plaintiff averred that the aforesaid property was being used for tethering animals and dumping cow dung etc. It was stated that defendants No.4 and 5 were also the owners in possession of 1 kanal 1 marla area (half share each). It was further averred that defendants No.1 and 2 are the sons, whereas defendant No.3 is the widow of Shri Mahender Singh (deceased brother of defendant No.4). The plaintiff claimed that defendants No.1 to 3 have no right, title, share etc. in the suit property or any part of khasra No.277. It was alleged that on 09.02.2009, defendants No.1 to 3 alongwith their other family members; in order to occupy and acquire illegal and forcible possession over the suit property, dug basement and started erecting a boundary wall, whereupon the plaintiff went to the site and tried to make defendants No.1 to 3 understand that they have no right to raise boundary wall over the suit property and that their act amounted to trespass and encroachment; however, of no avail. The plaintiff is stated to have reported the matter to the police, who went to the spot and stopped the illegal encroachment and construction over the suit property.

2.1 In the aforementioned circumstances, the plaintiff filed the aforesaid suit for mandatory as well as permanent injunction for directing



defendants No.1 to 3 to restore the possession of the suit property to the plaintiff and also to remove bricks and other construction material from the suit property and further, not to interfere with the peaceful possession of the plaintiff over the suit property in future.

3. Upon issuance of notice in the suit, defendants No.1 to 4 appeared and filed their written statement, controverting the case of the plaintiff. It was stated that they are owners in possession of the property forming part of khasra No.277, including the suit property. The defendants claimed that they are in possession over the aforesaid property for the last about 80 years. It was categorically stated that the plaintiff has no right, title or interest over the property of the defendants, which they depicted as AHGFED in the site plan produced by them. It was also stated that the alleged sale deed 15.04.1998 was not binding on the rights and interests of the defendants in respect of the property and the same is illegal, null and void. It is also the pleaded case of the defendants that khasra No.277 is owned by Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Khewat and that the defendants were co-sharers in the khewat No.260/252 (as per jamabandi for the year 1998-99). Area of khasra No.277 was admitted to be 2 kanal 9 marla, however, the remaining averments in the plaint were denied. With the aforesaid pleas, prayer for dismissal of the suit was made.

4. Defendant No.5 filed admitted written statement.

5. From the pleadings of the parties, the learned trial Court framed the following issues:-



- “1. *Whether the plaintiff is owner in possession of a plot comprised in khewat No. 260 khatoni No. 320 to 399 khasra No.277 total measuring 2 kanal 9 marla?? OPP*
2. *If it is proved, whether the plaintiff is entitled to the decree for mandatory and permanent injunction as prayed for on the grounds mentioned in the plaint? OPP*
3. *Whether the suit of the plaintiff 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 plaintiff has no cause of action to file the present suit? OPD*
6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
7. *Relief.”*

6. The parties to the suit led their respective evidence (oral as well as documentary) on the aforesaid issues.

7. The learned trial Court after considering the facts, pleadings as well as the evidence available on record, recorded findings under issues No.1 and 2, the relevant extract of which, reads as under:-

“22. Now coming upon the grounds taken by the plaintiff for taking a relief from this Court. The plaintiff has stated before the Court that he has filed the present suit within six months from the date of his dispossession so may be his title, is declined by this Court but he is still entitled to restitution of his possession as per Section 6/SRA. To prove his possession plaintiff has brought in notice of this Court Ex.P3 i.e. the Sale Deed in his favour. I have minutely perused the Sale Deed as well as the examination of plaintiff PW3. Certainly in the Sale Deed Ex. P3 there is recital of the fact that the possession has



been delivered to the purchaser on the spot but it is also a fact that this recital is common in all the sale deeds and it was the duty upon the plaintiff reiterate his possession before this Court also, but on perusal of Page no. 3 of his cross-examination he has admitted that these are the defendants no. 1 to 3 who are in possession of the suit property since the time when the share of the suit property was purchased Sheetal Dev and defendant no. 4 purchased the share of Khasra No. 277 vide Registered Sale Deed Ex.D12 on 01.01.2003 and when the defendants no. 1 to 3 are in possession of the suit property since the year 2003, certainly it cannot be held that the plaintiff was dispossessed from the suit property within six months before the filing of the suit. So this ground alleged by the plaintiff, demolishes.

23. The second right alleged by the plaintiff is qua the registered Sale Deed Ex. P3 as well as the Jamabandi for the year 1962-63. It is required to mention here that the present suit is not filed for correction in the Jamabandis and this Court is bound to look into the Jamabandi for the period when the Sale Deed has been executed in the favour of the plaintiff or the latest one. In the year 1998 when the said Sale Deed Ex. P3 has been executed in the favour of the plaintiff the Jamabandi for the same period has also been filed on record i.e. Ex.P6. In that Jamabandi in Column No. 4 and 5 the owner was Mustarka Malkan and the possession of Khud Kash Mustarka Malkan has been mentioned which clearly proves that suit property is the joint property and even the Sale Deed Ex.P3 also does not show exclusive share or possession of the plaintiff over the suit property but it mentions the share to the extent of 28/23133 out of total land measuring 1156 Kanal 13 Marla i.e. 1 Kanal 8 Marla. In these circumstances and with these mentions in the Sale Deed it is not established or proved on record that the



plaintiff has got his exclusive possession on the north portion of the suit property i.e. Khewat No. 277 and his admission on record before this Court i.e. his cross-examination certainly establishes that the suit property is owned and possessed by all the proprietors of the village.

24. *It is establishes principle of law that there can be no injunction against the co-sharers and when my above discussion and admission of the plaintiff proves that the defendants are in the suit property and plaintiffs are not in the exclusive possession of any of the share of the suit property then certainly the present suit of injunction is not maintainable and efficacious remedy of the plaintiff would have been the suit for partition, if any.*

25. *All above discussion shows that plaintiff has failed in discharging his burden to prove to the present issues, so the issues No. 1 and 2 are decided against the plaintiff and in favour of the defendants.”*

7.1 Further, issues No.3, 4 & 5 were held in favour of the defendants, whereas issue No.6 was decided in favour of the plaintiff. As a sequel to the findings on the various issues, the learned trial Court, vide judgment and decree dated 13.10.2016, dismissed the suit filed by the appellant-plaintiff.

8. Feeling aggrieved against the trial Court's judgment and decree dated 13.10.2016, the appellant-plaintiff preferred an appeal before the learned Additional District Judge, Jhajjar, which has also been dismissed vide judgment and decree 15.10.2022.

9. In the aforementioned facts and circumstances, the present regular second appeal has been filed before this Court.



10. Learned senior counsel for the appellant-plaintiff submits that the learned Courts below have erred in law and fact, in dismissing the suit of the appellant-plaintiff without considering the sale deed dated 15.04.1998 in favour of the appellant-plaintiff, wherein there was a clear recital that the possession over 1 kanal 8 marla comprised in khasra No.277 has been delivered to the plaintiff by his vendor. It is further submitted that the plaintiff had approached the learned trial Court with a specific plea that the cause of action had accrued in favour of the plaintiff on 09.02.2009 when defendants No.1 to 3 started raising the boundary wall on the suit property and since the suit was filed within a period of six months, therefore, his possession was liable to be restored in terms of Section 6 of the Specific Relief Act.

11. No other submission was raised.

12. I have heard learned senior counsel for the appellant-plaintiff and perused the paper-book with his able assistance.

13. Since the entire case of the plaintiff is based upon the recital in the sale deed dated 15.04.1998, therefore, learned senior counsel for the appellant-plaintiff has shown a copy of the sale deed in Court today. Having perused the sale deed, it is revealed that the plaintiff had purchased 1 kanal 8 marla out of joint khewat No.252 measuring 1156 kanal 13 marla (as per the jamabandi for the year 1993-94). The share purchased by the plaintiff is recorded in the sale deed as 28/23133 share. It is also mentioned in the sale deed that the “possession has been delivered from Mushtil No.277 min (1-8)”, meaning thereby that the possession has been delivered from Rect.



No.277. Learned senior counsel submits that, in fact, it is khasra No.277 and not Rect. No.277. In my considered view, since the appellant-plaintiff had purchased only a share in the joint khewat, therefore, at best he can claim himself to be a co-sharer in the joint land. Further, in order to prove his possession over khasra No.277 (1-8), the appellant-plaintiff has not led any documentary evidence in the shape of jamabandi or khasra girdawari in respect of khasra No.277 which may indicate possession of the appellant-plaintiff over the suit property. Rather, as per the jamabandi for the year 1963-64 (Ex.P-4) as well as jamabandi for the year 1998-99 (Ex.P-6), the entry in the cultivation column as against khasra No.277 is recorded as “Khud Kasht and Mushtarka Malkan”, which means “the joint possession of the proprietors/co-owners”. That apart, in the aforesaid revenue record, the entry in the “ownership column” is recorded as “Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Khewat”.

13.1 It has also come on record that one Sheetal Dev and defendant No.4 had purchased a share out of khasra No.277, vide registered sale deed dated 01.01.2003 (Ex. D-12). Further, the plaintiff examined himself as PW3 and in his cross-examination, he admitted that defendants No.1 to 3 were in possession of the suit property. Therefore, in my considered view, the reliance of the plaintiff upon the recital in the sale deed, to prove his possession over the suit property, cannot be accepted. Even otherwise, it is well settled that recital in the sale deed is a weak piece of evidence against strangers to sale deed.



13.2 Evidently, the plaintiff has failed to place on record the relevant revenue record for the period subsequent to execution of sale deed up to 09.02.2009 (when the appellant claims that the defendants had tried to construct wall on the suit property). Furthermore, it has also come on record that defendants No.1 to 3 are in possession of the suit property with effect from 2003 onwards.

14. In the attending circumstances, I am of the view that the plea of the plaintiff that he had been dispossessed on 09.02.2009 has been rightly rejected by the learned Courts below.

15. It has not been shown to this Court that the findings returned by the Courts below are either illegal or perverse or based upon mis-reading or mis-appreciation of any material evidence on record, so as to call for any interference. Having gone through the findings returned by the learned Courts below, I am of the considered view that the same are based upon proper appreciation of facts, pleadings as well as evidence on record. No question of law much less, a substantial question of law arises for adjudication in this regular second appeal.

16. Resultantly, the instant regular second appeal is dismissed being devoid of any merit.

17. All the pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

14.07.2026
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No