

2026:PHHC:099313



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

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**RSA-806-1995 (O&M)
Date of decision :20.07.2026**

SATWANT SINGH

... APPELLANT

VERSUS

BHAG SINGH (SINCE DECEASED) THROUGH LRS.

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sunny K. Singla, Advocate
for the appellant.

Mr. Gaurav Vir Singh Behl, Advocate
Mr. Vidul Kapoor, Advocate
for the respondent.

PARMOD GOYAL, J. (ORAL)

1. Present appeal has been preferred by appellant-defendant, being aggrieved by the judgment and decree dated 28.09.1991 passed by the then learned Additional Senior Sub Judge, Malerkotla, whereby the suit for possession and mesne profits preferred by the plaintiff-respondent was decreed and also by the judgment and decree dated 12.11.1994 passed by the then learned Additional District Judge, Sangrur, whereby first appeal preferred by the appellant-defendant was dismissed.

2. The simple case of the respondent-plaintiff in the suit for possession and mesne profits was that the land measuring 5 kanals 4 marlas, comprised in Khata No. 174/247, Khasra No. 537/3254 (5-4), situated in village Kasba

Bharal, was owned by Bahadur Chand and Bahadur Singh, sons of Sant Ram. Bahadur Singh had sold his share in the land to Satwant Singh-appellant-defendant, and mutation No. 4067 was sanctioned in his favour. Bahadur Chand remained the owner of the remaining land measuring 2 kanals 12 marlas. After the death of Bahadur Chand, mutation of inheritance was sanctioned in favour of his widow Pritam Kaur, daughters Babban Kaur, Balwinder Kaur, Joginder Kaur, Raj Kaur and Kartan Kaur, and son Buta Singh. The said share of land, which had devolved upon legal heir of Bahadur Chand, was sold by Balwinder Kaur to the plaintiff-respondent vide sale deed dated 16.11.1976. Respondent-Plaintiff further asserted that sometime after 13.07.1986, the appellant-defendant had encroached upon 15 marlas of land out of land owned by respondent-plaintiff by demolishing the boundary wall. It was further pleaded that Gurbachan Singh and Mohinder Singh, sons of Khazan Singh, had also taken illegal possession of 2 kanals 12 marlas 1 sarsahi of the respondent-plaintiff's land had filed a suit bearing No. 507 for permanent injunction seeking restraint against the respondent-plaintiff was preferred. The respondent-plaintiff, who was defendant in the suit No.507 dated 25.07.1986 filed by Gurbachan Singh and Mohinder Singh, contested the said suit and claimed that Gurbachan Singh and Mohinder Singh had illegally dispossessed him. He had also preferred a counterclaim seeking possession of 2 kanals 2 marlas 1 sarsahi of land allegedly taken over by Gurbachan Singh and Mohinder Singh. The said suit was decided by the then learned Sub Judge, 1st Class, Malerkotla, vide judgment and decree dated 03.01.1989, whereby the suit filed by Gurbachan Singh and Mohinder Singh was dismissed and the counter claim preferred by the respondent-plaintiff was decreed. In the said suit, the present respondent-

plaintiff relied upon the report of the Local Commissioner, Jagdish Chand, Field Kanungo, who had reported that land measuring 2 kanals, 2 marlas 1 sarsahi was in possession of Mohinder Singh and Gurbachan Singh, whereas 15 marlas of land was found to be in possession of the appellant-defendant, Satwant Singh. Accordingly, the plaintiff-respondent had sought possession as well as mesne profits for the alleged illegal use and occupation of the suit property.

3. The suit for possession and mesne profits was contested by appellant-defendant. It was asserted that the alleged sale deed dated 16.11.1976 executed by Balwinder Kaur in favour of respondent-plaintiff was without authority, as Balwinder Kaur was owner only to the extent of 1/7th share in the suit land measuring 2 kanals 12 marlas, which was owned by Bahadur Chand. It was further asserted that the report of the Field Kanungo was not binding upon appellant-defendant, as no notice was issued to him before conducting the proceedings. It was also pleaded that since the land was joint, the Civil Court had no jurisdiction to try the present suit and that the only remedy available to the respondent-plaintiff was to seek partition of the suit land. Accordingly, dismissal of suit was prayed for.

4. Following issues were framed from the pleadings of the parties:

- (i) *Whether the plaintiff is the owner of the land in dispute? OPP*
- (ii) *Whether the defendant has encroached upon the land in suit? OPP*
- (iii) *If issue No. 2 is proved, whether the plaintiff is entitled to claim Rs. 800/- as damages from the defendant? OPD*
- (iv) *Whether the suit is not maintainable in the present form? OPD*
- (v) *Whether the civil Court has no jurisdiction to entertain and try the suit? OPD*

(vi) *Relief.*

5. In the present case, the controversy involved is very limited. It is not disputed that both respondent-plaintiff and appellant-defendant are co-sharers in the suit land measuring 5 kanals 4 marlas. It is also not in dispute that respondent-plaintiff is claiming his rights through Balwinder Kaur LR of Bahadur Chand on the basis of the sale deed dated 16.11.1976, to the extent of 2 kanals 12 marlas in the suit land. Whereas defendant-appellant are claiming through Bahadur Singh, brother and co-sharer of Bahadur Chand.

6. The filing of Suit No. 507 dated 25.07.1986 and the counterclaim preferred by respondent-plaintiff in the said suit, as well as dismissal of the said suit and acceptance of counter claim vide judgment and decree dated 03.01.1989 are also not in dispute. It was held that Gurbachan Singh and Mohinder Singh, plaintiffs in the said suit, had forcibly taken possession of land measuring 2 kanals 12 marlas 1 sarsahi belonging to the respondent-plaintiff, and the counter-claim preferred by respondent-plaintiff for possession was accordingly decreed.

7. The first appeal preferred by Gurbachan Singh and Mohinder Singh was dismissed by the First Appellate Court vide judgment and decree dated 21.01.1994. Thereafter, Regular Second Appeal No. 1190 of 1994 preferred by Gurbachan Singh and Mohinder Singh before this Court was also dismissed on 18.05.1995. Subsequently, S.L.P. (C) No. 27264 of 1995 preferred by Gurbachan Singh, plaintiff in the said suit, was also dismissed by the Hon'ble Supreme Court vide judgment dated 24.11.1995, reported as 1996(3) RCR (Civil) 378.

8. Thus, it is clearly established that half portion of the total land measuring 5 kanals 4 marlas, which had fallen to the share of Bahadur Chand, from whom respondent-plaintiff is claiming ownership rights, was ordered to be

delivered to respondent-plaintiff by way of decree passed in counter claim, which has attained finality up to the Hon'ble Supreme Court.

9. It is worth noticing that the present suit was filed on 02.03.1989 after the counterclaim preferred by the respondent-plaintiff was allowed vide judgment and decree dated 03.01.1989 passed in Suit No. 507 dated 25.07.1986.

10. The present suit was decided by the learned Courts below primarily on the basis of the report of the Local Commissioner, wherein it was noticed that 15 marlas of land was in possession of the appellant-defendant, Satwant Singh. The said observation regarding possession of 15 marlas with Satwant Singh appears to be the sole basis on which the suit preferred by the respondent-plaintiff was decreed by the learned Court of first instance as well as the First Appellate Court.

11. On consideration, I find that both the Courts have erred in accepting the local Commissioner Report against present appellant. Learned Courts below have not considered that once Gurbachan Singh and Mohinder Singh had already been found to be in possession of 2 kanals 12 marlas 1 sarsahi of land belonging to the respondent-plaintiff, and possession thereof had been ordered to be delivered to the respondent-plaintiff, no further share in the suit property remained to be recovered by respondent-plaintiff. As far as the respondent-plaintiff is concerned, merely because the Local Commissioner reported that 15 marlas of land was in possession of appellant-defendant does not establish that he was in possession of any land belonging to plaintiff- respondent especially when defendant-appellant is co-sharer in suit land. Neither in local Commissioner report nor in pleadings plaintiff-respondent took the stand that 15 marla land in possession of appellant-defendant was included in 2 kanals 12

Marlas 1 sirsahi land which he claimed to be under the possession of Mohinder Singh and Gurbachan Singh.

12. The plaintiff-respondent was entitled only to the extent of 2 kanals 12 marlas of land purchased by him vide sale deed dated 16.11.1976. Once the said share stood recovered by him in Suit No. 507 dated 25.07.1986, he could not claim any portion of the share belonging to appellant-defendant, who was admittedly a co-sharer in the suit land, except by seeking partition and establishing that appellant-defendant was in possession of land beyond his lawful share. Therefore, the present suit, as far as the claim against appellant-defendant Satwant Singh is concerned, was not maintainable, and the only remedy available with respondent-plaintiff was to seek partition of the suit land. It is relevant to notice that Gurbachan Singh and Mohinder Singh, sons of Khazan Singh, were not co-sharers in the suit land but were encroachers over suit land, whereas appellant-defendant Satwant Singh admittedly was a co-sharer, as admitted by respondent-plaintiff in his pleadings.

13. Merely because appellant-defendant-Satwant Singh happened to be the son of Mohinder Singh does not lead to an inference that he had encroached upon the land belonging to respondent-plaintiff. This fact was required to be independently established by respondent-plaintiff, which he has failed to do, particularly in view of the fact that his claim for possession of 2 kanals 12 marlas 1 sarsahi against Gurbachan Singh and Mohinder Singh had already been allowed and the said decree had attained finality. Even local Commissioner in his report upon which reliance has been placed by learned Courts below, has not found that 15 marla land in possession of the appellant-defendant was part of 2 kanals 12 marlas, which respondent-plaintiff claimed in suit No. 507. Further,

Local Commissioner had only stated about possession of appellant-defendant but nowhere gave findings that possession of appellant-defendant was in excess of his share in suit land.

14. The respondent-plaintiff had already obtained possession of the said land measuring 2 kanals 12 marlas 1 sarsahi in pursuance of the judgment and decree dated 03.01.1989 passed by the learned Sub Judge, 1st Class, Malerkotla. There is no assertion on record that despite passing of the said decree, the respondent-plaintiff had not obtained possession from Mohinder Singh and Gurbachan Singh.

15. Therefore, the learned Courts below have wrongly relied upon the report of the Local Commissioner to conclude that appellant-defendant was also in illegal possession of the suit property, which was earlier in possession of respondent-plaintiff. The Local Commissioner had merely reported that appellant-defendant was in possession of 15 marlas of land, in addition to the encroachment allegedly made by Mohinder Singh and Gurbachan Singh over 2 kanals 12 marlas 1 sarsahi of land.

16. Accordingly, the present appeal is allowed. The judgment and decree passed by the learned Courts below are set aside. However, it is clarified that the respondent-plaintiff shall be at liberty to seek partition of the suit land and establish his rights therein in accordance with law.

17. In case any partition proceedings are initiated, the same shall be decided within a period of one year from the date of filing of such proceedings. It is further held that no finding regarding the nature of possession of appellant-defendant over 15 marlas of land can be recorded solely on the basis of the report of the Local Commissioner. The said issue is required to be determined in

appropriate partition proceedings, and the competent authority shall be at liberty to decide the extent of ownership, possession, and partition of the suit land.

18. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

20.07.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No