

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

RSA No.2079 of 2015 (O&M).
Date of Decision: 30.11.2015.

Hardev SinghAppellant.

VERSUS

Gram Panchayat, Dhilwan and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Preetwinder Singh Dhaliwal, Advocate for the appellant.

SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by appellant-plaintiff Hardev Singh (hereinafter referred to as the “appellant”) impugning the judgment and decree dated 16.01.2014 passed in Civil Suit No.91 of 26.03.2009 by learned Civil Judge (Junior Division), Barnala, dismissing the suit for permanent and mandatory injunction filed by appellant against respondents-defendants Gram Panchayat and others (hereinafter referred to as the “respondents”), which was upheld by the first appellate Court vide judgment and decree dated 04.12.2014.

2. The relevant facts are as under:-

A suit for permanent injunction seeking to restrain the respondents from interfering in his peaceful possession and from encroaching upon his house or causing obstruction in construction of eastern wall of his house (description of which was given in the head note of the plaint) was filed by the appellant. A prayer for issuance of mandatory injunctive order directing the respondents to construct the wall illegally and forcibly demolished by them on 26.03.2009 was also made. The appellant pleaded that the house in question is situated within the red line (Lal dora) of the village and is his ancestral property and there is a boundary wall around the house upto the height of 5 feet and he had been tethering cattle in the same. The respondents taking undue advantage of their status, being the Sarpanch and Panch, had been threatening and trying to encroach upon his house by illegally causing obstruction in construction of the eastern wall and had also forcibly demolished the boundary wall on 26.03.2009.

3. In the written statement filed by the respondents, they raised various legal and factual preliminary objections. According to them, the property in dispute is comprised in Khewat/Khatoni No.334/562, Khasra No.370/2(17-1) Gair Mumkin Abadi of which Washindgan Deh is the owner and it is under the control of the Gram Panchayat. On 20.03.2009, the appellant had filed a suit against Gurmeet Singh and Mohinder Singh alleging the suit property as his outer house and had sought an injunctive order against construction of the drain, but in the present suit he had shown the suit property as a plot in the site plan annexed with the plaint. On

26.03.2009, Jarnail Singh alias Jaili son of the appellant by taking undue advantage of his political links had got registered First Information Report No.34 dated 26.03.2009 under Section 452, 323, 324, 148, 149 of the Indian Penal Code at Police Station Tapa against the respondents and some other persons by concocting a false story, however, the said F.I.R. was cancelled after an inquiry was conducted. The respondents also submitted that under the garb of the present suit, the appellant wants to encroach upon the suit property.

4. The appellant filed replication controverting the objections raised by the respondents and reasserting his claim. On the rival contentions of the parties, following issues were framed:-

(1) Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.

(2) Whether plaintiff has no locus standi and cause of action to file the present suit? OPD.

(3) Whether the plaintiff has not come to the court with clean hands? OPD.

(3-A) Whether plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP.

(4) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court finding that the appellant had failed to prove his ownership qua the suit property dismissed the suit.

7. Appellant preferred an appeal against the judgment and decree dated 16.01.2014 passed by learned trial Court which was dismissed by learned District Judge, Barnala vide judgment and decree dated 04.12.2014.

8. Feeling aggrieved, the appellant has filed the instant Regular Second Appeal.

9. The submissions made by Mr. Preetwinder Singh Dhaliwal, learned counsel representing the appellant have been considered.

10. Learned counsel for the appellant argued that the entries relating to the suit property in the revenue record reflect that in the column of ownership '**Ababdi Deh**' is entered and in the column of occupation the entry is '**Makbooja Malkan**'. As per the Masavi Ex.D1, the Khasra No.370/2 is a vacant land having no construction on the same. The appellant is a resident of 'Abadi of Patti Raja'. He has been in possession of the plot since the time of his forefathers. As admitted by DW1 Baldev Singh Sarpanch and DW2 Mohinder Singh, the appellant had constructed a boundary wall around the plot which was demolished by Gram Panchayat. From the said facts, possession of the appellant on the suit property stands proved and to protect his possession he is entitled to the relief of permanent injunction.

11. In his pleadings, nothing was mentioned by the appellant for proper identification of the suit property. In that context he only attached a site plan with the plaint. On the other hand, the respondents categorically mentioned that the suit property is comprised in Khewat/Khatoni No.334/562, Khasra No.370/2(17-1) which was recorded as 'Abadi Patti Raja'. In

the Jamabandi Ex.D1 for the year 2008-09 in the column of cultivation it was recorded as 'Makbooja Malkan'. As per the findings of learned first appellate Court, PW1 Mohinder Singh admitted that the disputed property is Washindgan Deh. He stated that entries in the revenue record qua the suit property are in the name of the appellant but no such record was produced. PW2 Maghar Singh admitted in his cross-examination that he had never seen the father or grandfather of the appellant in possession of the suit property. He also admitted that he had not seen the possession of any other person of the village on the land shown as 'Makbooja Malkan' in the revenue record.

12. It is also noteworthy that as per findings of learned first appellate Court, a First Information Report No.34 dated 26.03.2009 under Section 452, 323, 324, 148, 149 of the Indian Penal Code was got registered by Jarnail Singh alias Jaili son of the appellant, at Police Station Tapa. Ex.D6 is the copy of the First Information Report wherein Jarnail Singh alleged that 3-1/2 Biswas of suit property had been purchased by his father Hardev Singh in the year 1979 from one Jagjit Singh Sardar, resident of Dhillwan and since then they are in continuous possession of the same. But in the present case, the appellant in his pleadings and also in his affidavit Ex.PW3/A claimed that the suit property is his ancestral coparcenary property. He categorically denied that he had purchased the same from Jagjit Singh. Also in his cross-examination, the appellant stated that he had filed the present suit to stop the Panchayat from constructing the drain. The said facts not only indicate that the appellant had concealed the material/

true facts by raising wrong pleas, it is also evident that the only intention of the appellant is to stop the Panchayat from constructing a drain which undisputedly is done for the benefit of the public at large.

When admittedly, the suit land is owned by Abadi Patti Raja and the appellant produced no evidence to prove his share in Makbooja Malkan or to prove the date, time and month since when he had been in possession of the suit property, it has been rightly held by learned first appellate Court that the suit property is part of *Shamlat* land being managed by the Gram Panchayat and the appellant has no concern with the same. It appears that by constructing boundary wall the appellant was only trying to encroach upon the suit property.

Thus, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

30.11.2015
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