

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

**RSA No.6056 of 2015  
Date of Decision: 06.12.2017**

Darshan Kumar and others

....Petitioners

V/S

Raj Singh and others

....Respondents

***BEFORE: HON'BLE MS. JUSTICE RITU BAHRI***

Present : Mr. Vishal Munjal, Advcoate,  
for the appellant.

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**RITU BAHRI, J.(Oral)**

Present appeal has been filed against the judgment dated 10.08.2015 passed by the District and Sessions, Judge, Pathankot, whereby appeal filed by defendants-appellant against the judgment and decree dated 04.04.2014 passed by the Civil Judge (Junior Division), Pathankot (Annexure P-2) vide which suit filed by the plaintiff-respondents for possession decreed, has been dismissed.

Brief facts of the case are that, plaintiffs along with Sh.Bikram Singh and Smt. Suresh Devi widow of Smt.Aruna Devi daughter and Mr. Sunil Singh and Deepak Singh sons of Gopal Ram are owner of the land as mentioned in the head note (hereinafter referred as the suit land). Plaintiff No.1 is co-owner having ½ share and plaintiffs Nos.2, 3 and Sh. Bikram Singh are having 1/8<sup>th</sup> share each. Sh. Gopal Singh who had 1/8<sup>th</sup> share has expired and survived by Smt.Suresh Devi widow, Smt. Aruna Devi Daughter, Sh. Sunil Singh and Deepak Singh, sons and they have inherited

1/8<sup>th</sup> share of late Sh. Gopal Singh. Bikram Singh has been serving in Army and after retirement, he has taken up employment in some company, Sh. Sunil Kumar and Sh. Deepak Singh are in Army Service, Smt. Aruna Devi is married and Smt. Suresh Devi generally lives in several places along with her sons and due to this reason they have not been able to join as plaintiffs. Suit land is open plot and plaintiff No. 1 purchased 1/2<sup>nd</sup> share for construction of this house. Plaintiff No. 1 has been working in Dubai and after purchasing the plot again went to Dubai. Plaintiff came to India in April 2009 and found that defendants started making use the suit land as courtyard of their houses. Plaintiffs have their house in Khasra No. 463/3 and 463/4 and they have already encroached upon the street bearing Khasra No. 463/2. Brother of the plaintiff No. 1 is also working abroad and his parents are handicap. Plaintiff No. 1 along with others plaintiffs demanded an explanation from defendants for using the suit land as courtyard and they advised to plaintiff to get the suit land demarcated. Plaintiff No. 1 got the suit land demarcated by marking the application to revenue authorities and Sh. Kewal Krishan Girdwar conducted the demarcation as local Commissioner and found the suit land being used by defendants as courtyard illegally. Plaintiff No. 1 had to go to Dubai in connection with his employment and came back in first week of February, 2010 and then all plaintiffs requested defendants to vacate the suit land and hand over vacant possession to the plaintiffs. Defendant refused to vacate the suit land. Hence the suit.

Upon notice defendants appeared and filed written reply taking preliminary objections to maintainability, suit is barred by res judicata. It is asserted that the suit is collusive between the plaintiffs and their father Sh.

Joginder Singh, father of plaintiff No. 1 had taken illegal possession of the land bearing portion of Khasra No. 26314 for which civil Suit No.98 was filed on 11.05.1998 by Sh. Darshan Kumar defendant no.1 for which was decreed for the possession of encroached portion of Khasra No.1 263/4 detailed in the suit for vide judgment and decree dated 05.02.2010 by Court of Sh. Harinder Singh Gill, Addl. Civil Judge, Senior Division, Pathankot and in the same suit part of the land bearing Khasra No. 462, Khewat No. 405 and Khatauni No. 116 measuring 0 Kanal, 9 Marlas which was being used as public passage by Sh. Darshan Kumar present defendant No. 1. Sh. Darshan Kumar had filed suit for permanent injunction vide the same suit detailed above restraining Sh. Joginder Singh father of plaintiff and his brother, son of Jagat Raj in any manner interfering in the use of public street situated in the above said Khasra Numbers in dispute i.e. Khasra No. 462 measuring 0 Kanal, 09 marlas leading to the house of the present defendants Sh. Darshan Kumar that part of relief in the aforesaid suit land was also decree against Sh. Joginder Singh, father of Plaintiff Sh. Raj Singh in the same suit. Present plaintiff has concealed material facts from the court and has also concealed the fact that part of the Khasra No. 462 is public street of village Gho, Tehsil Pathankot and District Gurdasput. Since, land more than 60 years leading to the house of Sh. Tilo Ram and Sh. Darshan Kumar earlier to one Smt. Parsino Devi real mother of plaintiff joint by her son Joingeer Singh, father of plaintiff, Lubh Singh and Catter Singh etc., had filed Civil Suit for permanent injunction against the present defendant Sh. Darshan Kumar etc., titled Parsino Devi Versus Parlad Kumar with regard to Khasra No. 447, 463/7 461 for permanent injunction that suit was decreed. It is pertinent to mention her that house in dispute of defendant no.

1 and 2 Darshan Kumar and house of Sh. Tilo Ram were already existing in the year 1940 i.e. time of their forefathers continuously till date and using the site in dispute house for residential house. Defendants have become underneath of their houses by operation of law under the provision of Punjab Village Common Land Regulations Act since they were in possession and used the house underneath their house for residential as non-proprietors were settled on the proprietary land by the proprietors for rendering service to the proprietors in the village as per social fabric of our village community as such law maker in their wisdom has recognized non proprietors as owners of their respective sites underneath their house so that proprietors now do not disturb their possession. Even otherwise the suit of the plaintiff is barred by res judicata, plaintiff are estopped by their act and conduct for filing the present suit, no cause of action, the present suit has been filed by just by way of counter blast of decree dated 05.02.2010 passed by Court of Sh. Harinder Singh Gill, Addl. Civil Judge, Senior Division, Pathankot in which plaintiff Sh. Joginder Singh have been ordered to vacate the illegal occupation of the land bearing Khasra NO. 463 R. It is pertinent to mention here that land bearing Khasra No. 463/4R was allotted as 5 marlas plot by the consolidation Authorities during the consolidation of holdings proceedings in the year 1961 earlier to that they did not have any ownership of land in the village. Land was allotted to the father of defendant sh. Karam Chand and defendant 4 ½ marlas plot have been allotted to Sh. Tilo ram, defendant N. 4 during the consolidation of holding being non-proprietors but this allotment does not make them proprietors as Shamlat in Punjab came into force prior to at that time when the Shamlat Law came into force Punjab, the defendants were non-proprietor and were

still non-proprietor. 5 Marlas plot were only Abadi plots which were also allotted to the defendant on the same part as they have already their houses there. The suit is bad for non-joinder of village Gho as management and owner of the public passage vests in Gram Panchayat Village Gho. This Court has no jurisdiction to entertain the present suit. On merits, it is denied the plaintiffs are owners in possession of 9 marlas of plot bearing Khasra No. 462 as already stated above part of it is Gair Mumkin public street. The revenue record showing the plaintiffs to be owner is factually incorrect and denied and part of it might be under the house of the defendant but possession of the since the year 1940 for residential purpose where they were settled by ancestors of Shri Bua Ditta and one Sh. Munshi Ram who is alleged to have executed the same sale deed in favour of Sh. Raj Singh but since this was actual owners of the plot sold to Raj Singh. Sh. Raj Singh can derive any benefit out of which the rest of the defendants already existing over the site even before Sh. Raj Singh purchased the same. Defendant is not admitted to the owner to the extent  $\frac{1}{2}$ <sup>th</sup> share nor he was within in possession of the same. The contents of the para No.3 are not admitted to be corrected even Vikram etc., have no right to dislodge the plaintiff from the present site, they are misusing the revenue record to file the present suit. It is also denied that plaintiff No.1 purchased  $\frac{1}{2}$  share for construction of his house in the suit land. It is denied that suit land was open plot rather part of it was public street and major part of it is Abadi for various persons. It is also denied plaintiff NO.1 is working in Dubai and plaintiff disclosed in April 2009 that defendant started making use of the suit land as courtyard of their house. As a matter of fact, defendant Nos. 1 and 2 and the house of defendant No. 3 residing at the present site even before prior to file the

previous suit No.98 of 11.05.1998 detailed above which was decreed on 05.02.2010 as the site plan of the house of the defendant No. 1 and 2, Sh.Tilo Ram defendant No. 4 duly shown to be existing in the site plan produced by present defendant in the aforesaid suit. As such, it is totally wrong and fraudulent on the part of the plaintiff to the alleged that suit bearing Khasra No. 462 was open land. The suit land was showing Pucca drain constructed by Gram Panchayat was duly shown on the site plan on 02.05.1998 produced by the defendant in the aforesaid suit which has been decreed and the site plan is accepted in the Civil Court in the aforesaid decree. It is incorrect that plaintiff might have been their houses in Khasra no.463/3 and 464/4. However, decree in regard to Khasra No. 463/4 has already been passed in favour of defendants as same forms part of plot of Abadi allotted in favour of Sh. Karam Chand father of defendants No.1 and 2 during the consolidation of holding in the year 1961. It is denied that any street has been encroached upon out of which Khasra No. 462. It is asserted that it is incorrect to state that any street bearing khasra No. 463/2 of that the same has been encroached by the defendant. It is asserted that there is no question of giving explanation to plaintiff. It is denied that any demarcation has been conducted by plaintiff. No such demarcation was conducted in the presence of the defendant if any such report has been produced, same is incorrect. Plaintiff No.1 has not disclosed from whom he has purchased the plot. Plaintiff has no cause of action in February, 2010 nor he has cause of action to dislodge the defendant from their ancestral house. Present suit has been filed by plaintiff in collusion with Sh. Joginder Singh father of plaintiff no. 1 against whom decree has already been passed by Civil Court. It is pertinent to mention here that in previous suit in the written statement

no such plea was taken by the father of the plaintiff No.1 that the house of defendants were located over the land purchased by his son or over the land of Ajit Singh and Chain Singh original proprietors. All other assertion made in the plaint denied with prayer to dismiss the suit.

From the pleadings of the parties the following issues were framed :-

1. Whether the plaintiff is entitled to the suit for possession of land bearing Khewat No.781, Khatoni No.1303, Khasra No. 462(red) measuring 9 marlas as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the suit of the plaintiff is barred by res judicata?OPD
4. Whether the suit of the plaintiffs are estopped by their act and conduct? OPD
5. Whether the plaintiff has no cause of action of locus standi to file the present suit? OPD
6. Whether the present suit has been filed just by way of counter blast to the decree dated 05.02.2010?OPD
7. Whether the suit of the plaintiff barred to non-joinder of Gram Panchayat?OPD
8. Whether this court has got no jurisdiction to entertain or try to present suit?
9. Relief ?

Learned Counsel for the Appellant-defendant has stated that the present appeal against the judgement of the lower Court and Appellate

Court whereby the suit for possession of land bearing Khewat No.781, Khatoni No. 1303, Khasra No. 462(red) measuring 0-9 marlas has been decreed. The plaintiffs/respondents had purchased the suit property from one Kuldip Singh and this fact reflected in Jamabandi Ex. P-4 with respect to land measuring four and half marlas. Prior to purchase of this land there was a litigation between the defendants and father of the plaintiff and as per the Judgement dated 08.10.2013 Ex.P-8 Khasra no. 462 was alleged to be a public passage. The case of the appellant before the trial court is that this judgment was binding by the plaintiff and thereafter father was party to the suit. However, the suit of the plaintiff had been decreed on the basis of demarcation report Ex.P-2 dated 04.06.2009 which is submitted by the Halqa Kanungo according to which such land of the plaintiff was found to have been encroached by defendant Nos. 1 to 3 to the extent of ½ share and by defendant No. 4 to the extent of other ½ share. As per this demarcation report P-2 defendants neither filed any objection nor led any evidence to rebut its correctness.

As per this report the defendants had built their houses in the land of their ownership as described in jamabandi Ex-P-5 measuring 4 marlas comprised of Khasra No. 463/3 and Ex.P-6 measuring 5 marlas comprised of Khasra No.463/4 and the site plan of this land is Ex.D-1. However, as per the demarcation report Ex.P-1, the area of their houses towards khasra No. 462, is much more than the area owned by them.

Ld Counsel for the appellant further states that Darsahan Kumar (defendant No.1) examined as DW 1 where he has admitted that his house and houses of other are situated in the area of Khasra No. 462, 463/3 and 463/4. As per the sale deed executed by the Kuldeep Singh, plaintiff Raj

Singh had purchased four and half marlas of land and mutation was to this effect reflected in Jamabandi Ex. P-4. Suit of the plaintiff has rightly been decreed on the ground that plaintiff is owner of Khasra No. 462. It is further observed that defendant have never approached revenue authorities for change of entries in the record of rights.

No ground to interfere in the findings recorded by both the courts below has been made out.

Dismissed.

December 6<sup>th</sup>, 2017  
Riya

(RITU BAHRI)  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |