

RSA-662-2009(O&M) &  
RSA-663-2009(O&M)

-1-

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

(1) RSA-662-2009(O&M)

Panchayat Balmik Janj/Barat Ghar Basti Deharianwali, Ferozepur  
City and others

...Appellants

Versus

Ashiq alias Raj Pal through his LRs and others

...Respondents

(2) RSA-663-2009(O&M)

Gandhi Nagar Balmik Janjghar Sabha

...Appellants

Versus

Ashiq alias Raj Pal through his LRs and others

...Respondents

Date of Decision:-24.9.2019

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Charanjit Sharma, Advocate  
for the appellants.

Mr.S.K. Arora, Advocate  
for respondent No.1.

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**H.S. MADAAN, J.**

By this order, I shall dispose of two RSAs i.e. RSA-662-

2009(O&M) & RSA-663-2009(O&M) filed on behalf of appellants.

Briefly stated, facts of the case are that plaintiff Panchayat Balmik Janjh/Barat Ghar Basti Dehrian Wali, Ferozepur City and its President Lachhman, Secretary Ashiq, Vice President Pali, Joint Secretary Billa, Cashier Puran, Members Manjit, Masta, Missra and Saraj had brought a suit for possession and damages/mesne profit in respect of Panchayat Balmik Janjh Ghar Basti, Deharian Wali, Ferozepur City against defendants i.e. Ashiq alias Raj Pal, Kaka, Babu Lal and Babbi, all sons of Shahab, residents of their basti.

As per the version of the plaintiffs as necessity for construction of Barat/Janjh Ghar in their area was being felt since long, vacant land adjoining to Punjab State Electricity Board Quarters owned by Har Bhagwan Memorial High School was left by the authorities for construction of Janjh Ghar; a site plan was got sanctioned from Municipal Committee in February 1975 but due to lack of funds the construction could not be started. However, the residents of the area collected funds and got the pit filled with earth; in the year 1987, Kaka defendant had raised a dispute threatening that he and his family members would raise construction on the site meant for construction of Barat Ghar, therefore a meeting of residents of Basti Deharianwali was called on 1.11.1987 in which the said Kaka was also present. It was agreed that no construction would

be raised by said Kaka and his family members in the site; a resolution was also passed in the register of Panchayat, which was signed by Kaka – defendant No.3; despite that Kaka and other defendants brought bricks and other building material near the disputed site for raising construction, however, residents of the locality, namely, Gulab Singh, Tej, Lachhman, Shingara etc. filed a Civil Suit bearing No.559-1/13.10.1990 for grant of permanent injunction against the defendants, which was decided in favour of the plaintiffs; the defendants therein had filed an appeal against that judgment and decree; during pendency of that appeal, security proceedings under Sections 107/151 Cr.P.C. and under Sections 145/146 Cr.P.C. were initiated; SDM(C), Ferozepur passed an illegal order on 14.5.1997 for delivering possession of the disputed property to defendant No.1, in that way defendant No.1 and other defendants are in unauthorized possession of the property, which they are liable to vacate and pay mesne profit to the tune of Rs.1,000/- per month from 25.5.1997 till date.

On being put to notice, the defendants appeared and filed written statement contesting the suit contending that plaintiffs have no right or concern with the suit property; in fact defendant No.1 is in possession of this property having his residential house there, where he is putting up along with his family members for last many years; earlier the plot was in possession of father of answering defendants

for the last about 40 years having been purchased by him on 16.3.1969 for a sum of Rs.8,000/- from Harbhagwan Memorial High School and after his death the answering defendants came in possession thereof and they constructed two residential rooms over the plot. Denying the remaining allegations, the defendants prayed for dismissal of the suit.

The plaintiffs had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to relief of possession as prayed for? OPP.
2. Whether the plaintiff is entitled to the damages or mesne profit as prayed for? OPP.
3. Whether the plaintiff has no cause of action? OPP.
4. Whether the suit is barred by limitation? OPD.
5. Whether the suit is bad for misjoinder of necessary parties? OPD.
6. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPP.
7. Relief.

In order to prove their case, the plaintiffs had examined

PW1 Gurmeet Kaur, PW2 Janak Raj, PW3 Gurmail Singh, PW4 Hakam Chand, PW5 Kanshi Ram, PW6 Jagdish Raj, PW7 Lachhman Dass and PW8 Buta Ram.

On the other hand, the defendants had examined Ashiq @ Rajpal (defendant No.1) as DW1, Mohinder Pal as DW2 and Suba Singh as DW3.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 15.3.2008 decreed the suit of the plaintiffs with costs and plaintiffs were declared entitled to the possession of the property in dispute and the defendants were directed to hand over the vacant possession of the suit property to the plaintiffs within two months of the date of passing of judgment and decree. The plaintiffs were further held entitled to mesne profits of Rs.1,000/- per month from 25.5.1997 till actual delivery of possession by the defendants along with interest at the rate of 6% per annum.

Such judgment and decree left the defendants aggrieved and defendant No.1 Ashiq alias Raj Pal brought an appeal before District Judge, Ferozepur, which was assigned to Additional District Judge, Ferozepur, who vide judgment and decree dated 1.9.2008 accepted the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiffs with costs.

The said judgment and decree left the plaintiffs aggrieved

and they have filed the present regular second appeal before this Court, notice of which was issued to the respondents and respondent No.1 has appeared through counsel.

It may be mentioned here that subsequently the nomenclature of the plaintiff was changed to Janjghar Sabha and a separate appeal was filed under that name also before this Court challenging those very judgment and decree as in the first appeal filed.

I have heard learned counsel for the parties besides going through the record.

Though the plaintiffs had claimed that the site in suit belonged to them, which had been given to them by way of oral gift but there is neither any concept like giving of immovable property by way of oral gift nor any cogent and convincing evidence produced by the plaintiffs in that regard. The plaintiffs have failed to place on file any document of title to the suit property. They are relying heavily upon the judgment and decree passed in earlier litigation, in suit filed by Gulab Singh, Tej, Lachhman, Shingara etc. in which they were found to be in possession but that judgment and decree do not help the plaintiffs much in proving their title since the parties in that litigation were not the same and essentially the question of possession was involved. Here as per own case of the plaintiffs, the possession of the suit property is there with the defendants, though

according to them SDM has wrongly delivered the possession to the defendants but the thing remains that the possession is with the defendants. The defendants have though alleged that their father had purchased the site in question from Harbhagwan Memorial High School on 16.3.1969 for a sum of Rs.8,000/- but they have failed to produce on record any sale deed or any other document of title in favour of their father, in that way, both the sides are sailing in the same boat as regards the title to the suit property is concerned. It being so, if the plaintiffs wanted to get possession of the site in suit on the basis of previous possession then in terms of Section 6 of the Specific Relief Act, 1963, the suit should have been filed within six months of the dispossession. However, the suit has admittedly been filed after that period. Since the plaintiffs are not proved to be owners of the site in suit, they cannot seek possession of the same for that reason contending that the limitation for filing of suit for possession is 12 years, therefore, the suit filed by them is not maintainable. They are neither entitled to possession of the site in suit nor to claim any mesne profits from the defendants.

Learned Additional District Judge, Ferozepur has dealt with all the aspects of the case in a very proper and appropriate manner while rejecting the claim of the plaintiffs. The judgment and decree passed by the trial Court, which were result of misappraisal of the evidence and wrong interpretation of law were rightly set aside

by the learned Additional District Judge, Ferozepur.

Thus I do not find any illegality or infirmity in the judgment passed by the learned First Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

No substantial question of law arises in the appeals.

Finding no merit in the appeals, the same stand dismissed.

24.9.2019  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**