

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

**RSA-2473-2011**

**Date of Decision: September 24, 2019**

**Gurmukh Singh and another**

**...Appellants**

**Versus**

**Kulwant Singh**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present: Mr. Brijeshwar Singh, Advocate,  
for Mr. Madan Sandhu, Advocate,  
for the appellants.

Mr. M.S. Uppal, Advocate,  
for the respondent.

**ARUN PALLI, J. (ORAL)**

Suit filed by the respondent-plaintiff was decreed by the Trial Court, vide judgment and decree, dated 31.08.2010, as even the appeal preferred against the said decree failed, and was dismissed on 01.04.2011, the appellants-defendants are before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

Plaintiff prayed for a decree of injunction claiming himself to be owner in possession of a land measuring 34 Kanals 11 Marlas, comprised in Killa No. 48//2/6-18, 9/8-0, 10/2/3-13, 11/8-0, 12/8-0, situated in the revenue estate of village Achanak, and injuncting the defendants from interfering in his peaceful possession.

In brief, the case set out by him was that he alongwith his brothers, namely, Balbir Singh and Angrej Singh, purchased the suit property from Anokh Singh son of Assa Singh, pursuant to a sale deed, dated 13.12.2004. For, Anokh Singh was in possession of the suit land, post execution of the sale deed plaintiff and his brothers were put in possession of the suit property. No passage existed at the spot in the suit land, however, the defendants though had no concern, but were bent upon to crave out a passage in the suit land. Thus, the suit.

Defendants, in defence, pleaded, *inter alia*, that neither Anokh Singh son of Assa Singh was in possession of the suit property nor plaintiff or his brothers ever entered possession of the suit land. There was a water course in existence for the past 40-50 years on the common butt of land comprised in Mustil and Killa Nos. 48//11, 12, 19, 20, which was demolished by the plaintiff and Pala Singh. And, in this regard proceedings were pending before the Divisional Officer Canal, Patiala. Therefore, the suit was liable to be dismissed.

Upon a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that perusal of the jamabandi for the year 2002-03 Ex. P-1, revealed that Anokh Singh son of Assa Singh was owner in possession of the suit property, measuring 34 Kanals 11 Marlas. It could not be disputed either that the suit land was purchased by the plaintiff and his brothers in equal shares from Anokh Singh, pursuant to a sale deed, dated 13.12.2004 (Ex. P-2). Apparently, the jamabandi for the year 2002-03 (Ex. P-1) showed that suit property,

comprised in Khasra Nos. 48//2, 9, 10/2/3, 11 and 12, measuring 34 Kanals 11 Marlas, was in possession of the plaintiff and his brothers, who stepped into the shoes of Anokh Singh. Undoubtedly, the jamabandi only has a presumption of truth. But defendants failed to lead any cogent evidence to rebut that presumption. The documents Exs. D-1 to D-7, relied upon by the defendants, as concluded by the Courts below, did not even pertain to the suit property. Thus, were of no consequence. The proceedings as regard demolition or restoration of water course, pending before the canal authorities, suffice it to say had no bearing on the matter in issue in the present suit. That being so, the only and the inevitable conclusion the Courts below could reach: injunct the defendants from causing inference in the possession of the plaintiff and/or carve out a pahi/passage therein.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions concurrently arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

**(ARUN PALLI)**  
**JUDGE**

**September 24, 2019**

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO