

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

RSA-68-2022 (O&M)
Date of decision: 01.02.2022

NIRMAL SINGH

...Appellant

V/S

KESAR SINGH AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S. Mamli, Advocate,
for the appellant.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

CM-153-C-2022

Application is allowed, as prayed for, subject to all just exceptions.

Main case

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 27.02.2017, as upheld by the learned First Appellate Court vide its judgment and decree dated 02.11.2021.

3. Briefly stated, facts as noticed by Courts below are that the plaintiff is co-sharer in the suit land. Plaintiff along with other co-sharer filed partition application before AC IInd Grade, Radaur seeking partition of suit land by keeping the possession in tact as the plaintiff has developed the land in his possession and even planted trees thereon. However, the AC IInd Grade, Radaur disturbed the possession of the plaintiff over that land. Plaintiff filed objections before AC IInd Grade, Radaur against the 'naksha

bay' which was not in accordance with 'Tarika Takseem'. Those objections were ignored by AC IInd grade, without giving him reasonable opportunity. The plaintiff filed appeal against the order of AC IInd Grade, Radaur but that was also dismissed unreasonably. The 'Sanad Takseem' dated 26.09.2012 prepared on the basis of illegal 'naksha bay' and against the 'Tarika Takseem' is illegal. The AC IInd Grade, Radaur has disturbed the long possession of plaintiff over his land and allotted him some other land whereas plaintiff's land was unreasonably allotted to defendant no.1 because he has collided with defendant No.1. Warrants of possession on the basis of said illegal 'Sanad Takseem' was issued by AC IInd Grade, Radaur on which the Field Kanungo gave proprietary possession to Kesar Singh despite the fact that 58 popular trees and one mango tree is standing in the suit land being in possession of plaintiff after under valuing the trees. During this suit, a compromise was effected between plaintiff and defendant No.1 with the intervention of the relatives as per which compensation of the trees standing in Khasra No.197 and 198 as deposited by defendant No.1 in the Court was received back by him from plaintiff as per affidavit dated 13.11.2013. The defendant No.1 thereafter admitted the possession of the plaintiff over khasra No.197 and 198 and undertook to get revenue entries corrected in favour of the plaintiff. However, defendant No.1 has now refused to do so.

4. Based on the rival pleadings, following issues were framed:

- 1. Whether the plaintiff is entitled to the decree for declaration, as prayed for? OPP*
- 1A Whether the plaintiff is entitled to the consequential relief of permanent injunction, as prayed for, on the grounds mentioned in the plaint? OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has not come to the court with clean hands? OPD*

4. *Whether the plaintiff has no locus standi or cause of action to file and maintain the present suit against the defendants?*
OPD

5. *Whether the plaintiff is legally estopped by her own act and conduct from filing the present suit against the defendants?*
OPD

6. *Relief.”*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, issue No.1 and 1A were decided against the plaintiff. Issues No. 2 to 5 were decided against the defendants and suit was dismissed by the trial Court.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this Court.

8. I have heard the appellant's learned counsel and perused the judgments of both the Courts below. First Appellate Court judgment, *inter alia*, is premised on the reasoning reproduced below:

“13. XXX XXX

The learned counsel for the contesting respondent has drawn the attention of this court to the order dated 24.07.2013 passed by the then learned Civil Judge (Junior Division) Yamuna Nagar at Jagadhri, whereby application under Order 7 Rule 11 CPC filed by the defendants in Civil Suit bearing No.18 of 2013 titled as “Harjinder Singh Versus Kesar Singh etc.” in the similar matter was allowed holding that Civil court has no jurisdiction as Section 158 of the Punjab Land Revenue Act, 1887 specifically excludes the jurisdiction of the Civil Courts in matters within the jurisdiction of Revenue Officers. Thereafter, Harjinder Singh, the present defendant No.5, filed Civil Revision No.5295 of 2013 (O&M) against the said order which was also dismissed by Hon'ble Punjab and Haryana High Court vide order dated 28.10.2013 and it will be apt to reproduce paras 4 and 5 of the aforementioned order, which read as below:-

XXX XXX

Thus from the above discussion, it is amply clear that jurisdiction of Civil Court to try the present suit is specifically barred under Section 158 (2) (xviii) of the Punjab

Land Revenue Act, 1887 and the only remedy available to the plaintiff is to file appeal/revision or a writ.

14. With due deference, there is no dispute about the ratio of law laid down in the citations relied upon by the learned counsel for the appellant, however, in view of discussion made above, the same are not applicable to the facts of the present case, since in the case in hand, the plaintiff has failed to prove that there was either collusion or violation of principles of natural justice.”

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out. To my mind, judgments under challenge have been rendered after due and correct appreciation of facts and evidence adduced by the respective parties. I am in agreement with the findings rendered therein.

10. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending application/s, if any, shall also stand disposed of.

13. No order as to costs.

(ARUN MONGA)
JUDGE

February 1, 2022
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No