

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

**RSA No.2965 of 2018 (O&M)**  
Date of decision : 9<sup>th</sup> September, 2022

Resham Singh

... Appellant

Versus

Mehar Singh & others

... Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. A.S .Khosa, Advocate for the appellant.

**MANJARI NEHRU KAUL, J.**

**CM No.2406-C of 2020**

The appellant, by way of instant application, is praying for listing the main appeal for hearing.

In the light of averments made in the application and in the interest of justice, the same is allowed as prayed for and the Regular Second Appeal is taken up for hearing today.

**RSA No.2965 of 2018**

The suit for possession filed by the plaintiff was dismissed vide judgment and decree dated 06.07.2017 by the court of learned Addl. Civil Judge, (Sr. Divn.), Zira. The appeal preferred against the aforementioned judgment and decree by the plaintiff was also dismissed vide order dated 17.01.2018 of the lower Appellate Court,

Ferozepur. The plaintiff is now before this Court in the instant Regular Second Appeal. The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff may be noticed as thus:

The suit land along with some other land was previously owned by the parties as co-sharers, wherein the plaintiff and defendant No.1, who are brothers, constructed their houses in Khasra No.196M//4/1 and 4/2, and defendant No.3 Jagjit Singh constructed his house in Khasra No.196M//7/2. Defendant No.3 was residing in a house separate from that of defendant No.1. A family settlement was effected between the plaintiff and his brother defendant No.1, which was reduced into writing vide agreement dated 22.05.2012. It was agreed therein that the plaintiff would vacate the land measuring 2 Kanals 9 Marlas from Khasra No.196M//13, which had fallen to the share of defendant No. 1, and in lieu thereof, defendant No.1 would remove Malba from the land measuring 1 Kanal in Khasra No.196M//4/1, which had fallen to the share of the plaintiff before 25.02.2013. The agreement was produced before the Notary Public for attestation and after the contents of the agreement had been read-over and explained, the plaintiff, defendant No.1 and witnesses Saroop Singh and Buta Singh signed the said agreement. The contents of the agreement were also entered into by the Notary Public in his register at

serial number 1152 dated 22.05.2012 and the entries were signed by both the defendant No.1 and plaintiff in the aforementioned register. Pursuant thereto, defendant No.1 started residing in Khasra No.196//13 and removed the Malba from Khasra No.196// 4/1. The plaintiff delivered possession of the land measuring 2 Kanals 9 Marlas from Khasra No.196//13 to defendant No.1. However, defendant No.3 failed to remove the wall marked as letters A to B, which had been constructed by him. The plaintiff moved an application before the revenue authorities for demarcation. DDR No.495 qua demarcation was incorporated in the revenue records. The Revenue Authorities demarcated the land and an entry was made in this regard in the Revenue records. Thereafter, thadda was established by the revenue authorities, which however was removed by the defendants. The matter was reported to the police but in vain. It was averred that all the co-sharers were in exclusive possession of their respective shares according to ownership. It was submitted that plaintiff was owner/co-sharer of land bearing Khewat No.196//4/1, 4/2 and no partition had been effected through the revenue authorities. Since the defendants refused to accept the genuine request of the plaintiff, he was left with no other option but to institute the suit in question.

In the written statement, the defendants disputed the pleaded case of the plaintiff and submitted that the suit land along with

some other land was no longer joint as it had been partitioned. It was submitted that the plaintiff, had been given khasra numbers mentioned in the head-note of the plaint after the partition, and was in possession of the same. By instituting the suit in question, plaintiff was claiming possession of 2 Marlas of land which was already in his possession. Execution of the written agreement dated 22.05.2012 was admitted, however, it was denied that any Malba had been left behind by the defendants in the land given to the plaintiff as per the aforementioned agreement.

Both the courts below, on the basis of the material on record and evidence led, concurrently concluded that the plaintiff was not entitled to the relief of possession prayed for as he had failed to prove his own case.

Admittedly, the family settlement dated 22.05.2012 was not incorporated in the revenue records and in the absence of any such entry, not much value can be attached to it. On an application moved by the plaintiff himself, a Local Commissioner was appointed, who submitted his report Ex.CX. As per the report of the Local Commissioner, the disputed wall falls in Khasra No.196M//7/2 and not in Khasra No.196//4/1 or 4/2.

In the circumstances, even the assumption that the two khasra numbers i.e. Khasra No.196//4/1 or 4/2 had fallen to the share of

the plaintiff would not help the plaintiff's case. The claim of the plaintiff does not hold any substance as the wall in question falls in Khasra No.196//7/2 which is not even the property in question in the instant suit. Hence, in the light of the aforementioned facts and circumstances of the case, particularly report Ex.CX of the Local Commissioner, both the courts below did not commit any error while dismissing the suit of the plaintiff.

On being pointedly asked, learned counsel has failed to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. In view thereof, the appeal being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)  
JUDGE

**September 9, 2022**

*rps*

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| Whether speaking/reasoned | Yes/No |
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| Whether reportable | Yes/No |
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