

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

RSA-1017-1992 (O&M)
Date of decision: 01.02.2023

Amarjit ...Appellant
V/S

Amar Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. M.K.Dogra, Advocate,
For the appellant.

Mr. Anurag Chopra, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

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

2. Having suffered concurrent adverse findings by the two Courts below, defendant is in second appeal before this Court assailing the trial Court judgment and decree dated 05.05.1989 whereby suit for permanent injunction restraining defendants from interfering into possession of plaintiff over the suit property was decreed, as upheld by learned First Appellate Court vide its judgment and decree dated 24.02.1992.

3. Briefly stated, facts as noticed by Courts below are that plaintiff filed a suit for permanent injunction to the effect that the defendant be restrained from interfering with his possession in the disputed land. It is pleaded that plaintiff is owner in possession of the disputed land measuring

35 kanals 19 marlas situated in village Fattu Wala. The defendant has got no concern with the suit land. He threatened to forcibly dispossess the plaintiff from the disputed land, but has got no right under law to do so. Plaintiff thus filed suit for prohibitory injunction that the defendant be restrained from interfering with his possession over the suit land.

4. Upon notice, defendant/appellant appeared and filed written statement taking some preliminary objections with regard to the maintainability.

4.1. On merits, it is stated by defendant that he and his brothers, mother and sister were in cultivating possession of a part of the disputed land and plaintiff is not entitled to any injunction regarding that part of land. The defendant did not, however, dispute the possession of the plaintiff in the remaining part land. It is further pleaded that defendant along with his brothers, sister and mother had also filed a civil suit and in that suit parties were directed to maintain status quo. It is denied that defendant ever tried to interfere with the possession of the plaintiff. The other allegations made in the plaint are also denied.

5. Based on the rival pleadings, following issues were framed by trial Court:

- “(1). Whether the plaintiff is owner in possession of the land in suit?OPP*
- (2) Whether the suit is not maintainable in the present form?OPD*
- (3) Relief.”*

6. 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*.

7. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided in favour of the plaintiff and issue No.2 was decided against the defendant. Consequently, the suit of plaintiff was decreed in favour of the plaintiff restraining the defendant from interfering with the possession of the plaintiff in the suit land measuring 35 kanals 19 marlas.

8. First Appellate Court below dismissed the appeal of the defendant, resulting in Regular Second Appeal by defendant before this Court.

9. In its judgment, the learned First Appellate Court, *inter alia*, observed as below:

“ XXX XXX

13. It may also be noted there is a statement of Amarjit Singh now appellant before me made in the court of Naib Tehsildar on 11.08.1987 in the course of proceedings for correction of Khasra Girdawari with regard to Rectangle No.31 (No.37 which is in disputed) where he stated that parties have effected compromise and he prayed for date for effecting final compromise. So it is clear from this argument also that application for correction of khasra Girdawari was made only in respect of Rectangle no.37 (31) in which the order Ex. P3 appears to have been passed and in that proceedings possession of Amar Singh was admitted. It was observed in the case of Banwari vs. Degh Rani and others, 1982 PLJ 397 that there is presumption of correctness to be entries in the revenue record which are later in period. This authority supports the view of learned counsel for the respondent that the latest entries in the revenue record with regard to the land in dispute has been in the name of the respondent-plaintiff shown there as in possession of the land 1988 Punjab Law Journal 480, Lekh Ram Vs. Jhandu was cited by the learned counsel for the respondent to press his point that in a suit for declaration that the plaintiff is owner and for permanent injunction for restraining the defendant from taking forcible possession, and the plaintiff failed to prove the ownership, relief of injunction could not be granted on the basis of possession alone. This authority was cited to press the point no.1, defendant-appellant does not disclose in the pleadings that in which capacity he is found in possession, (2) defendant is not proved to be in the possession; (3) defendant is not

proved to be the owner of the land whereas the plaintiff is cited in the revenue record as owner in possession. Therefore, according to him defendant is not entitled to any relief.

14. The result of the above discussion is that there are not valid reasons to disturb the findings given by the trial Court and the appeal has no force and is dismissed with costs.”

10. I have heard the learned counsel for the parties and perused the judgments of both the Courts below.

11. On perusal of the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. No new argument has been canvassed by the learned counsel for appellant and there has been mere repetition of the stand taken below, which as stated has been rightly negated.

12. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

13. 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.

14. 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.

- 15. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
- 16. Pending application/s, if any, shall also stand disposed of.
- 17. No order as to costs.

(ARUN MONGA)
JUDGE

February 01, 2023
Vandana

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