

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

**RSA-3858-2019**

**Date of Decision: November 14, 2023**

**KARAMJIT SINGH**

..... Appellant

Versus

**BHAG SINGH AND ORS**

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Satyendra Chauhan, Advocate for  
Mr. P.S. Khurana, Advocate for the appellant.

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**HARKESH MANUJA, J. (ORAL)**

By way of present appeal, challenge has been laid to the judgments and decrees dated 06.11.2015 and 05.01.2019 passed by the Courts below whereby, a suit for mandatory injunction filed at the instance of appellant as well as proforma respondents seeking removal of construction raised upon the suit property marked as ABCD in the plaint being situated within the Abadi deh of Village Himmatgarh, Tehsil Derabassi (Dhakola), District SAS Nagar (Mohali) (as described in the plaint) stands dismissed.

2. Briefly stating, in the present case, the appellant as well as the proforma respondents initially filed a suit for permanent injunction against respondent No.1-defendant for restraining him from raising construction over the suit property as detailed in the head note of the plaint, however, later the prayer was amended for seeking relief of mandatory injunction against respondent No.1-defendant for removal of

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construction of house which was raised during the pendency of the suit. The basis of the suit was a writing dated 16.08.1970, in the name of father of the plaintiffs from the original owner Sant Singh who allegedly sold the portion marked as ABCD and a portion situated towards its western side. It was pleaded in the plaint that having raised construction of a house over portion situated towards western side, Balwant Singh and his family including plaintiffs started residing there and the portion ABCD was given to respondent No.1-defendant on rent who later started residing therein as a tenant. The respondent No.1-defendant having started raising fresh construction thereupon after demolishing the existing one, compelled the appellant as well as proforma respondents to file the present suit.

3. On the other hand, the factum of tenancy was denied by respondent No.1-defendant while submitting that the suit property fell to his share. It was further pleaded that the parties to the lis being closely related; Balwant Singh who happened to be husband of plaintiff No.5/proforma respondent and brother of respondent No.1-defendant was in possession of his separate share being in occupation of portion situated towards western side of suit property marked as ABCD in the plaint.

4. The trial Court vide judgment and decree dated 06.11.2015 dismissed the suit filed at the instance of plaintiffs. Aggrieved thereof, First Appeal was filed, however, the same was dismissed vide judgment and decree dated 05.01.2019.

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5. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find any substance in the submissions made on behalf of the appellant.

6. Though, reliance has been placed upon a writing dated 16.08.1970 (Ex. P-2) vide which certain property, falling within the Abadi deh of Village Himmatgarh (Dhakola), Tehsil Derabassi, District SAS Nagar (Mohali) was purchased by the father of the appellant and proforma respondents namely Balwant Singh, however, the plaintiffs, failed to prove it to be the suit property in occupation of respondent No.1-defendant.

7. Moreover, the plea raised on behalf of the plaintiffs as regards the respondent No.1-defendant being tenant over the suit property was never established on record, there being no evidence led in this regard. Besides, the respondent No.1-defendant even produced electricity bills with payments receipts as Ex.-D1 to Ex.-D8, showing the electric meter connection in his name being installed over the property in question so as to establish his plea of same having fallen to his share in the family settlement. More than that, though a prayer in the suit was made for grant of mandatory injunction, directing respondent No.1-defendant to demolish the construction raised over the suit property and handover the same to them, however, once the ownership of plaintiffs was seriously disputed by respondent No.1-defendant, rather than pursuing the relief of mandatory injunction, the plaintiffs were required to seek declaration qua their ownership in addition to making a prayer

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for grant for decree of possession, especially when PW3 i.e. one of the plaintiffs even admitted the possession of respondent No.1-defendant from last 30 years and during his lifetime Balwant Singh never filed any suit. Thus, in the aforesaid facts and circumstances, the plaintiffs who were to stand on their own legs failed to prove the case set up by them in the plaint.

8. In view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus dismissed.

9. Pending application(s), if any, shall also stand disposed of.

14.11.2023

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( **HARKESH MANUJA** )  
**JUDGE**

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether Reportable</i>        | <i>Yes/No</i> |