

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****133****RSA-415-2024 (O&M)****Date of decision: 28.08.2025****Gurnam Singh and another****...Appellant(s)****Vs.****Surat Singh and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Ravi Gakhar, Advocate for the appellants.***********NIDHI GUPTA, J.**

Present Second Appeal has been filed by the defendants against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the plaintiffs/respondents for permanent injunction has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiffs had filed a suit for permanent injunction restraining the defendants no. 1 and 2 alongwith their attorneys, LRs, Associates and other anti social elements from taking illegal, high headedly, forcibly dispossessing the plaintiffs from the possession of the suit property measuring 1 Kanal 1 Marla comprised in Khewat No.41, Khatoni No.45 Khasra No.108 (0-19) and 149 (0-2) Gairmumkin Abadi Kitta 2 (1K-1M) as per Jamabandi Hadbast No.125, situated at Drawan, Sub-Tehsil Adampur, PS Bhogpur, District Jalandhar (hereinafter referred to as "suit property"). It was the case of the plaintiffs that they are co-sharers and co-owners in possession of the suit property



after the demise of their father and grandfather. Defendants are the neighbours of the plaintiffs and had no concern with the suit property. However, they are having evil eye upon the suit property and also want to demolish the construction of the plaintiff raised thereon. It was further averred that defendant No.2 had come to the suit property with JCB machine and tried to dismantle the suit property to merge the same into their property. However, plaintiffs had raised hue and cry and had managed to desist the defendants in their illegal act. Hence present suit was filed on 29.04.2015.

3. Upon notice, defendants had appeared and filed written statement resisting the suit by submitting that it was the plaintiffs who had encroached upon the land in their residential house and when the defendants asked them to demolish the suit property then the present suit has been filed.

4. Replication was filed reiterating the averments in the plaint and denying those in the written statement.

5. On the basis of pleadings of the parties, following issues were framed vide order dated 29.07.2016:-

“1. Whether no cause of action has arisen to the plaintiff to file the present suit? OPD.

2. Whether the site plan attached with the plaint is incorrect? OPD.

3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.

4. Whether the suit is not maintainable? OPD.



5. *Whether the plaintiffs are entitled for the relief of permanent injunction, as prayed for? OPP.*

Relief.”

6. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Junior Division), NRI Cases, Jalandhar vide judgment and decree dated 06.02.2017 had decreed the suit of the plaintiffs with costs to the effect that *“defendants no.1 and 2 are permanently restrained from taking illegal forcibly dispossessing the plaintiffs from the possession of the suit property in any manner whatsoever except in due course of law.”*

7. The appeal filed by the defendants was dismissed by the Id. Additional District Judge (NRI Cases), Jalandhar vide judgment and decree dated 01.09.2023. Hence, the present second appeal by the defendants.

8. It is submitted by learned counsel for the appellants that defendant appeared before the lower Court and it was specific plea taken by the appellant that plaintiffs are guilty of disclosing the names of other co-owners. It is specifically pleaded that plaintiffs have encroached upon the land of the defendants in their residence house and when the defendant asked them to get demarcated the suit property, then the present false and frivolous suit has been filed by them. It is averred that on the eastern side of the property of the plaintiffs, they have encroached a part of the land of the defendants.

9. It is further submitted by learned counsel for the appellants that Id. trial Court and lower appellate Court have given wrong and illegal finding. In the present case plaintiffs filed a suit for permanent injunction



with regard to property measuring 1 Kanal 1 Marla, comprised in Khasra no. 108(0-19) 149 (0-2) K-1 M out of which plaintiffs have only 1/0 share in the said Khasra numbers meaning thereby that plaintiffs are owner of 0-2 marlas only, whereas plaintiffs is getting the injunction with regard to 21 marlas, which is inherently wrong. Further it is made clear that Khasra no.149 is not at all nearby or adjoining to Khasra no.108 or Khasra No.107 and 72, owner and possessed by the defendants/appellants. Khasra no.108 is adjoining to Khasra no.72 at the western side. The Plaintiffs produced the site plan Ex. P-8 and Ex.P-9, which is wrong. Further Ld. Lower court has failed to calculate the area belonging to the appellants as well as the respondents. Plaintiff has tried to get injunction in Khasra no.72 for which they are not entitled as they are not owner in possession of that property.

10. Learned counsel for the appellants further submits that in the present case, best evidence was the Sajra Aksh, which was also the public document regarding revenue record, but that application was illegally and unlawfully dismissed by the appellate court.

11. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

12. No other argument is raised on behalf of the appellants.

13. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellants. The record reveals that as per Jamabandi for the year 2010-11 Ex.P5, plaintiffs



are in possession of suit property being one of the co-sharers. Names of the defendants are not reflected in the revenue record either in column No. 4 or 5 qua the suit property. On the other hand, plaintiffs were found to be in settled possession of the suit property. Plaintiff No.1 had stated that on 29.04.2015 defendants had tried to demolish their house as shown in site plan Ex.P8 by bringing JCB machine. PW5 Dharminder Singh had supported the said statement by stating on Affidavit Ex.PW5/A that on 29.04.2015, one JCB had come from eastern side from main gate of property of defendants; and the same is also clear from another site plan Ex.P9. Case of the plaintiffs was supported by PW3 and PW5 who had also stated that on 29.04.2015, defendants had tried to demolish the suit property of the plaintiffs. Further, defendants had averred in their written statement that incorrect site plans have been placed on record. However, no contrary site plan was brought on record by them. PW4 had also stated that site plan Ex.P9 has been admitted to be true by defendant No.1.

14. It is also to be noted that the learned lower appellate Court had dismissed the appeal of the defendants with the observation that dispute between the parties in the present case is with regard to demarcation of land. As such, learned lower appellate Court was of the opinion that:-

“9.....Interest of justice will be met by upholding the impugned judgment and decree subject to rider/observation that if the appellants/defendants or their successors-in-interest, seek demarcation of the property owned and possessed by them and comprised in Khasra No.72 and 107

and if it is found that the respondents/plaintiffs are in possession of the part of the property of the appellants/defendants comprised in Khasra No.72 and 107 in that eventually the decree passed by the Ld. Trial Court for permanent injunction against the appellants/defendants herein qua that part shall not be operative and the appellants/defendants will be well within their rights to take possession of the same in accordance with law.

*10. Hence Keeping in view the totality of the facts of the present case and the aforementioned discussion this court is of the opinion that judgment passed by Ld. Trial Court whereby the suit filed by the respondents/plaintiffs has been decreed, calls for no interference except the observations as made above. **Accordingly, the present appeal is hereby dismissed with observation as above.**"*

15. In view of the same, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

16. Pending applications, if any, stand disposed of.