



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

RSA No.1925 of 1990(O&M)

Reserved on : 09.01.2025

Pronounced on: 18.01.2025

Narain Singh (since deceased) through LRs Appellant

V/s

Sohan Lal (since deceased) through LRs and another....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Paramveer Singh, Advocate, for the appellant.
 Mr. Bharat Bhushan Sharma, Advocate, for respondent No.1.
 Mr. Deepak Vashisth, Advocate, for respondent No.2.

VIKRAM AGGARWAL, J.

1. Defendant No.1-Appellant (Narain Singh) assails the judgment and decree dated 17.05.1990 passed by the Court of learned Addl. District Judge, Faridabad, dismissing the appeal preferred against the judgment and decree dated 11.08.1989 passed by the Court of learned Addl. Senior Sub-Judge, Faridabad, vide which the suit for permanent injunction filed by respondent No.1-plaintiff (Sohan Lal), was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiff-Sohan Lal filed a suit for permanent injunction restraining defendant No.1-Narain Singh from interfering in the peaceful possession of the plaintiff over agricultural land measuring 7 *kanals* 11 *marlas* (fully described in the plaint), situated within the revenue estate of Village Mawai, Tehsil Ballabgarh, District Faridabad (hereinafter to be referred to as the “suit land”). It was claimed by the plaintiff that he along

with defendant No.2-Mohan Lal (proforma defendant), who are real brothers



were in cultivating possession under *Shamilat Deh*, being co-sharers of the suit land. Reliance was placed upon entries in the *Jamabandis* for the years 1976-77, 1971-72, 1966-67, 1961-62 and 1954-55. It was averred that defendant No.1 had no right, title or interest in the suit land. Despite having been requested, he did not admit the claim of the plaintiff and was bent upon interfering in his peaceful possession, as a result of which the suit was filed.

4. Defendant No.1 opposed the suit. In the written statement, certain preliminary objections with regard to *locus standi*, the plaintiff not being in possession of the suit property, the suit having been filed in collusion with proforma defendant No.2, cause of action, estoppel, the suit being bad for non-joinder and mis-joinder of parties etc. were raised. It was also averred that the suit was barred by *res judicata*, since the suit in question had been decided by the District Revenue Officer vide judgment dated 27.02.1987 as regards the land comprised in Rectangle No.14, *Killa* No.12/1(3K-2M) on an application for correction of *Khasra Girdawari* having been moved by defendant No.1. It had been held vide order dated 27.02.1987 that the land measuring 3 *kanals* 2 *marlas* (a part of the suit land) was actually in cultivating possession of defendant No.1 and, therefore, ordered for correction of *Khasra Girdawari*. On merits also, the same stand was taken.

5. Replication was filed, in which the contents of the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff and defendant No.2 are in cultivating possession of the land as co-sharers?***
- 2. Whether the suit is not maintainable?***
- 3. Whether the plaintiff has no locus-standi to file the present suit?***



4. *Whether the plaintiff has no cause of action to file the present suit?*
5. *Whether the suit is barred by the principle of respondent judicata?*
6. *Whether the suit is collusive, as alleged?*
7. *Whether the plaintiff is stopped from filing the present suit by his own act and conduct?*
8. *Whether the suit is bad for non-joinder and misjoinder of parties?*
9. *Relief.”*

7. Parties led their respective evidence. The trial Court decreed the suit filed by the plaintiff and the appeal preferred against the said judgment and decree was dismissed by the first appellate Court leading to the filing of the present second appeal.

8. Learned counsel for the parties were heard.

9. It was submitted by learned counsel representing defendant No.1 that both the Courts below had erred in decreeing the suit filed by the plaintiff. Reference was made to the order dated 27.02.1987 (Ex.D1) passed by the District Revenue Officer, vide which it had been held that the possession over land measuring 3 *kanals* 2 *marlas* was that of defendant No.1. Reference was also made to the revenue record produced by the plaintiff and it was submitted that the plaintiff had to show that he was in possession of the suit land on the date of the filing of the suit, which the documents produced by the plaintiff did not show.

10. Learned counsel further submitted that the Courts below had lightly brushed aside the order dated 27.02.1987 (Ex.D1) and had erroneously held that the said decision would not operate as *res judicata*. Learned counsel referred to the entire oral and documentary evidence led on the record of the case and submitted that the judgments of the Courts below are not sustainable.



11. It was also submitted that both the Courts below had erroneously held that against the order dated 27.02.1987 (Ex.D1), an appeal had been preferred, whereas no such appeal had been preferred and, therefore, the order had become final. It was lastly submitted that even otherwise the jurisdiction of the Civil Court was barred in terms of the provisions of Section 13 of the Punjab Village Common Lands (Regulations) Act, 1961 (for short the “1961 Act”). In support of his contentions reliance was placed on:-

1. ***Sarjeet Singh (D) Th. LRs vs. Hari Singh and others***, (2015) 1 SCC 760;
2. ***Ram Singh vs. Gram Panchayat, Mehal Kalan***, 1987(1) PLR 224;
3. ***Parminder Singh and others vs. State of Punjab and others***, 2017(2) LAR 1;
4. ***Gram Panchayat Hansawas Khurd vs. Dhan Singh and others***, 2022(3) RCR (Civil) 436;
5. ***Rekah Singh vs. Babu Singh and others***, 1985 PLJ 266;
6. ***Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta and another***, (2020)19 SCC 119;
7. ***Gurbachan Singh vs. Gram Panchayat of Mansuha Kalan and others***, 1990(1) PLR 226;
8. ***Sulochana Amma vs. Narayanan Nair*** (1994)2 SCC 14 and
9. ***Puthen Veetil Nolliyodan Devoki Amma and others vs. Puthen Vettel Nolliyodan Devoki Amma and others***, 1980 AIR Kerala 230.

On the other hand, learned counsel representing the



respondents, submitted that there is no illegality in the judgments and decrees passed by the Courts below and that they were in fact passed after considering the factual and legal position. It was submitted that the possession of the plaintiff over the suit land was duly established from the revenue record. Learned counsel submitted that the order dated 27.02.1987 (Ex.D1) was passed without following any procedure and without any evidence having been led and, therefore, the same cannot be said to be a conclusive determination of the rights of the parties, which could have barred the suit on account of *res judicata*.

13. It was contended that the order, in any case, had not been become final, as an appeal had been preferred against the said order though nothing could be brought on record about the same. Learned counsel submitted that both the Courts below had examined the matter in extenso and had correctly enjoined the defendant from interfering in the peaceful of the plaintiff over the suit land.

14. I have considered the submissions made by learned counsel for the parties and have perused the record which was duly summoned.

15. To prove his possession, the plaintiff produced on record Jamabandis (Ex.P1 to P5) from the years 1954-55 onwards which depicted that previously the father of the plaintiff and defendant No.2 namely Ramji Lal had been cultivating the suit land and after him, the plaintiff and defendant No.2 were in cultivating possession continuously, without interruption, as co-sharers in the *Shamilat Deh*. Even the *Khasra Girdawaris* were produced by the defendants in their evidence from *Khariff* 1982 till *Rabi* 1987, which also showed the possession of the plaintiff and defendant No.2. The argument that the plaintiff should have showed his



no document to the contrary produced by defendant No.1 and in any case it was defendant No.1 himself who moved an application for correction of *Khasra Girdawari*. There is, therefore, no dispute that the plaintiff and defendant No.2 were in cultivating possession of the suit land.

16. Reliance by defendant No.1 upon the order dated 27.02.1987 (Ex.D1) passed by the District Revenue Officer is misfounded. A bare perusal of the order shows that the District Revenue Officer adopted a procedure unknown to law and arrived at a conclusion that defendant No.1 was in possession of the suit land. Before reverting to the said order, a reference to the order dated 24.09.1984 (Ex.D2) passed by the Assistant Collector 2nd Grade, vide which the application filed by defendant No.1 for correction of *Khasra Girdawari* was rejected, needs to be referred to. It was noticed by the said authority that the applicant could not pinpoint the land in his possession at the spot at the time of spot inspection, nor could he produce any documentary evidence in the shape of *Jamabandis* or *Khasra Girdawaris* to prove his possession. It was noticed that the documents (Exs.P1 and P2) which had been produced by him in fact showed the cultivating possession of the plaintiff and defendant No.2. It was further noticed that the witnesses which had been produced by defendant No.1 were neither the *Lambardar* nor the *Sarpanch* or *Panch* of the village and that the entries in the *Girdawari* could not be corrected on oral statements. This order was set aside by the District Revenue Officer stating that he had carried out a spot inspection on 22.12.1986, where the plaintiff told him that he had sown the crop of *masoor* and mustard. He also noticed that the plaintiff and defendant No.1 claimed that the land was in their cultivating possession but could not swear about the same in front of the co-villagers.



possession rather than looking at the documentary evidence. He stated that the cultivators of the neighbouring land had also stated that the land was in possession of defendant No.1. He went on to state that the file also showed that the possession of defendant No.1 was there for quite some time. How and on the basis of which documents, he arrived at such a conclusion is not mentioned. It is not understood as to how possession of agricultural land could have been determined by way of spot inspection. This Court, therefore, has no hesitation in holding that the order dated 27.02.1987 (Ex.D1) does not inspire any confidence and in fact, cannot, in any manner, be stated to have finally and conclusively determined the rights of the parties.

17. No doubt, despite having stated that an appeal had been preferred against the said order, no record to either prove or disapprove the same was produced. In any case, even if it is presumed that no appeal was filed, in the considered opinion of this Court, the order dated 27.02.1987 (Ex.D1) would not bar the suit filed by the plaintiff by the principle of *res judicata*. Section 11 of the Code of Civil Procedure, 1908 (for short the “CPC”) defines *res judicata*:

***“Section 11 Res judicata-No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*”**

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.



Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

[Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

The definition itself would show that the suit would not be barred by *res judicata*, for the issue before the revenue authorities was of correction of *Khasra Girdawari* and the issue before the Civil Courts was of permanent injunction. It cannot, therefore, be said that the matter directly and substantially in issue before the Civil Courts was also directly and substantially in issue in the previous proceedings. Further, the revenue Court was not competent to try a suit for injunction and the Civil Court was not competent to order correction of *Khasra Girdawari*.

18. I have gone through the judgments relied upon by learned counsel for the appellant. The judgment in the case of **Sarjeet Singh** (supra)



deals with the provisions of Section 13 of the 1961 Act, wherein it was held that the Civil Court did not have the jurisdiction as regards issues of possession and title. There is no dispute in the law laid down in that judgment, but the same would not come to the aid of the appellant because the suit filed by the plaintiff was a suit for injunction which, as per settled law is maintainable. Still further, it was not a dispute with the Gram Panchayat and was a dispute between private individuals. For the same reasons, the judgment in the case of **Ram Singh** (supra) also would not be applicable. Similarly, the judgment in the case of **Gurbachan Singh** (supra) would also not be applicable to the present case. The judgment of a Division Bench of this Court in the case of **Parminder Singh** (supra) is also on the subject of title and ownership. In the case of **Gram Panchayat Hansawas Khurd** (supra), a coordinate Bench of this Court held that the Collector had all incidental powers to decide a suit for grant of injunction. In this case, an application for rejection of plaint had been dismissed by the trial Court but the revision petition was allowed by a coordinate Bench and the suit was dismissed. Notably, the suit in that case was a suit for title under Section 13A of the 1961 Act. Therefore, this judgment would also not come to the aid of the appellant because in that case a title suit was pending before the Collector and during its pendency a suit for injunction was filed. It was held by the coordinate Bench that the civil suit involved adjudication of rights of the parties over the suit property as a result of which it would be barred under Section 13 of the 1961 Act. In the present case, there is no question of title and it was only the question of alleged interference in the possession of the plaintiff by defendant No.1 and, therefore, the suit would not be barred.



involved as a result of which it was held that the Civil Court did not have jurisdiction and, therefore, the said judgment would also not be applicable.

In the case of ***Balkrishna Dattatraya Galande*** (supra), there was a suit under the Specific Relief Act seeking permanent injunction. It was held that unless the plaintiff proved that he was in actual possession of the suit property on the date of filing of the suit, the injunction could not be granted. This was proved on record before the Courts below in that case. In the present case, the revenue record produced by the plaintiff showed the possession of the father of the plaintiff and thereafter, of the plaintiff for a number of years. Even the *Khasra Girdwawaris* produced by defendant No.1 showed the cultivating possession with the plaintiff and defendant No.2. Nothing contrary to the said record was produced and it was nobody's case that the plaintiff was not in possession of the suit land. Under the circumstances, the said judgment would also not come to the aid of the appellant. The judgment in the case of ***Sulochana Amma*** (supra) deals with *res judicata*. In view of the discussion on the point of *res judicata*, this judgment would also not apply to the present case, though there can never be any dispute as regards the ratio of law laid down in the said judgment. For the same reasons, the judgment in the case of ***PVN Devoki Amma*** (supra) would not apply.

19. The cumulative result of the discussion in the preceding paragraphs leads this Court to the conclusion that the present appeal is devoid of merit and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No