



RSA-134-1993 (O&M)

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

RSA-134-1993 (O&M)

Judgment reserved on 20.08.2025

Judgment pronounced on 16.09.2025

SMT. BACHITTAR KAUR (SINCE DECEASED) THROUGH LRS.**... APPELLANTS****VERSUS****PATIALA MUNICIPAL COMMITTEE, PATIALA AND ANOTHER****...RESPONDENTS****COCP-691-2002 (O&M)****THE MUNICIPAL CORPORATION, PATIALA ... PETITIONER****VERSUS****RAJINDER SINGH SIDHU AND OTHERS ...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for the appellants (in RSA-134 of 1993) and
for the respondent(s) in COCP-691-2002.

Mr. Rupinder Singh Khosla, Senior Advocate with
Mr. Yogender Verma, Advocate
for the respondent-MC Patiala (in RSA-134 of 1993) and
for the petitioner(s) in COCP-691-2002.

PARMOD GOYAL, J.

1. The present appeal has been preferred by the plaintiff-appellant, whose suit for permanent injunction was decreed by the learned Court of Sub Judge, Ist Class, Patiala, vide judgment and decree dated 03.12.1988. However,



the first appeal preferred by the defendant was allowed vide judgment and decree dated 31.10.1992 by the learned Additional District Judge, Patiala, thereby dismissing the suit of the plaintiff.

2. The plaintiff had sought a decree for permanent injunction, asserting her status to be of co-sharer in the suit land and claiming to be in exclusive and continuous possession thereof for over 40 years. It is the case of plaintiff that the defendants, without any right or title, have recently started interfering in her peaceful possession by attempting to dump debris and rubbish on the suit property using municipal trucks. Hence, the plaintiff sought restrain orders against the defendants from causing any obstruction or nuisance in respect of the suit land.

3. Vide their joint written statement, the defendants had contested the suit by asserting that the suit property is *Shamlat Deh* land, which vests in the Municipal Committee. It is further claimed that the land in question is a pond ('*Johar*') and has remained under the possession and control of the Municipal Committee. The defendants had denied the plaintiff's claim of exclusive possession and have contended that she has no legal right, title, or interest in the suit property. Apart from denying the plaintiff's possession over the suit property and asserting that the land in question is *Shamlat Deh* comprised in pond under the ownership and control of the Municipal Committee, the defendants also raised several preliminary objections. These included objections regarding: (i) non-joinder of necessary parties; (ii) failure to serve notice under Section 80 of the Code of Civil Procedure (CPC); (iii) lack of jurisdiction of the civil court; and (iv) non-payment of requisite court fee.

4. From the pleadings of the partis, following issues were framed:-

1. *Whether the plaintiff is co-sharer of the suit land? OPP.*
2. *Whether the plaintiff is in possession of suit property for the*



last 40 years? OPP

3. *Whether the suit is not maintainable without impleading the administrator? OPD.*
4. *What is the effect of non-service of notice U/s 80 CP C? OPD*
5. *Whether the suit is not property valued for the purposes of court fee and juris-diction? OPD.*
6. *What is the effect of non-service of notice under Sec. 49 of the P.M. Act? OPD.*
7. *Whether the suit is not maintainable in the present form? OPD.*
8. *Whether the plaintiff is entitled to the injunction prayed for? OPP.*
9. *Relief.”*

5. The learned Court of first instance, after appreciating the evidence led by the plaintiff, including the testimonies of PW-1 and PW-2 and documentary evidence such as copy of mutation, *jamabandi*, and *khasra girdawari* (Exhibits P-4 to P-13), concluded that the plaintiff was in possession of the suit property and accordingly decreed the suit. The Trial Court also took into consideration a previously decided suit, i.e., Civil Suit No. 207 of 1971, filed by the plaintiff against Pavittar Singh and Jaggu Mal for permanent injunction in respect of *Khasra No. 921*, which is the subject matter of the present litigation. The said suit was decreed by the learned Sub Judge, Patiala, vide judgment and decree dated 19.01.1972, whereby the plaintiffs were held to be owners of 1/8th share in *Khasra No. 921* and in exclusive possession thereof.

6. Relying upon the above findings and evidence, the learned Court of First Instance decided issues No. 1, 2, and 3 in favour of the plaintiff and against the defendants, while Issues No. 4, 5, 6, 7, and 8 were also decided against the defendants and in favour of the plaintiff. Suit was decreed.

7. The learned First Appellate Court, upon reappreciation of the



evidence specially revenue record, concluded that the suit land is recorded as *Shamlat Taraf Patiala* and is classified as *Gair Mumkin Chhapar-Tohba*, indicating that it is a pond or water body. The Appellate Court held that since the land is *Shamlat Taraf* and recorded as a pond, it vests with the Municipal Committee by operation of law. It was further observed that the possession of such vacant land follows the title, and therefore, the Municipal Committee, being the rightful owner, is in possession. Based on these findings, the learned First Appellate Court set aside the judgment and decree passed by the Court of first instance, whereby the plaintiff-appellant's suit was decreed.

8. Learned Senior Counsel for the appellants has contended that the learned First Appellate Court committed a manifest error in holding that the Municipal Committee was the owner of the suit property, even though the suit filed by the plaintiff was one for permanent injunction and not for declaration of title. It was further argued that the First Appellate Court erred in concluding that the plaintiff was not in possession of the suit land, contrary to the revenue record on file, which clearly reflected the plaintiff's possession. It is argued that on basis of these erroneous findings, the First Appellate Court allowed the appeal, dismissed the plaintiff's suit, and set aside the judgment and decree dated 03.12.1988 passed by the learned Court of first instance. Therefore, judgment and decree passed by first appellate court is liable to be set aside

9. Learned Senior Counsel for the appellants has argued that the First Appellate Court erred in delving into the issue of ownership, as the plaintiff had filed only a suit for permanent injunction based on long possession over the suit property. However, after considering the respective contentions raised by the parties and examining the facts, circumstances, and evidence on record, I find no reason to take exception to the conclusion arrived at the First Appellate Court.



10. Perusal of the judgment of the learned Court of first instance reveals that the court has erred in accepting the plaintiff's possession over the suit property. This conclusion appears to have been based primarily on the evidence of the approved draftsman, PW-1, who had prepared the site plan of the suit property, and on oral assertions made by PW-2, the plaintiff's attorney, who, notably, admitted the existence of a pond measuring 21 Bighas and 13 Biswas over the suit property. The learned Court of first instance has also failed to adequately consider the revenue records produced by the plaintiff as Exhibits P-4 to P-13. A close examination of these revenue records clearly indicates that the suit land comprised in khasra No. 921 measures 43 Bighas and 10 Biswas and is recorded as *Shamlat Taraf Patiala Khas*, with *Gair Mumkin Chhapar* (pond) shown thereon to the extent of $\frac{1}{2}$ share of khasra No. 921. As per jamabandi for year 1971–72, the suit land was recorded as measuring 45 Bighas and 19 Biswas. As per the revenue record, half of this land was classified as *Shamlat Taraf Patiala Khas*, and within this portion, *Gair Mumkin Tohba* measuring 20 Bighas and 9 Biswas was duly mentioned. The remaining half was shown to be held by co-sharers, and the present plaintiff, Bachittar Kaur, was recorded as having a $\frac{1}{8}$ th share therein. However, in the present suit, the plaintiff is claiming possession over more than 21 Bighas, far exceeding her recorded share only on the basis of her share recorded to the extent of $\frac{1}{8}$ share. There is no material to conclude that plaintiff – appellant came in possession of $\frac{1}{2}$ share where pond is in existence. Infact, PW-2 in his cross examination had admitted existence of pond and fact that water gets collected in pond. Therefore, claim of appellant regarding possession over pond is falsified by evidence of her own witness - PW-2.

11. The learned Court of first instance also wrongly took note of the fact that the plaintiff had earlier filed a suit in 1972, which was decreed by the learned



Sub Judge, Patiala, vide judgment and decree dated 03.12.1988, wherein the plaintiff's right was recognized only to the extent of her 1/8th share in the total land measuring 45 Bighas and 19 Biswas. This decree otherwise has no applicability on rights of defendants who were not party in said suit. Even in *Jamabandi* for the year 1971–72 plaintiff's ownership was shown limited to a 1/8th share, while a pond (*Gair Mumkin Tohba*) existed over 20 Bighas and 9 Biswas.

12. It is also significant that half of the total land was classified as *Shamlat Taraf* and used for common purposes i.e pond. Under the applicable legal framework, in view of Section 2(g)(3) of the Punjab Village Common Lands (Regulation) Act, 1961 such shamlat land being used for common purposes vests in the Gram Panchayat and possessed by it. In the present case, since the Municipal Council is the successor-in-interest to the Gram Panchayat, the ownership, control and possession of the said *Shamlat* land including the pond vests in the Municipal Council.

13. It is worth noting that there appears to have been a consistent attempt, in connivance with the revenue authorities, to misrepresent and gradually reduce the area recorded under the pond (*Gair Mumkin Tohba*) in the revenue records. In the *Jamabandi* for the year 1971–72, the area under the pond was shown as more than 20 Bighas. However, by the year 1981, it was reduced to 10 Bighas and 1 Marla. Later, in the *Jamabandi* for the year 1986–87, the land was once again shown as *Shamlat Taraf* under a pond to the extent of half share, i.e., 21 Bighas and 15 Biswas, out of the total 43 Bighas and 10 Biswas comprising in Khasra No. 921.

14. It is further revealed from the 1986–87 *Jamabandi* that Bachittar Kaur, the present plaintiff, had already alienated more than 19 Bighas and 7



Biswas far in excess of her recorded share of 1/8th share. In fact, she had sold 13 Bighas and 19 Biswas beyond her entitlement. Appellant was never in possession of pond land which was being used for common purposes and existence of pond has even been admitted by PW-2.

15. These revenue entries, clearly establishes that out of the total 43 Bighas and 10 Biswas in Khasra No. 921, half the land was under a pond and recorded as *Shamlat Taraf*. The plaintiff had a fractional share and as per the revenue records, she has already sold land beyond her lawful share.

16. The plaintiff has no right, title, or interest over the portion of the suit land which is covered by the pond, which constitutes approximately half of the total area in khasra No. 921. This portion stands recorded as *Shamlat Taraf* and has been historically used for common purposes, i.e., as a pond (*Gair Mumkin Tohba*). By operation of law, such land vests in the Gram Panchayat or its successor body in this case, the Municipal Council. Therefore, the plaintiff cannot claim any exclusive possession or right over the said portion. There is no evidence (either oral or documentary) showing possession of plaintiff over pond area. Ex. P4 to Ex. P14 only showed ownership and possession of 1/8th share in khasra No. 921 which plaintiff has already sold. The present case clearly reflects an attempt by the plaintiff to encroach upon land that is vested in the Municipal Council and reserved for public utility. A land which is shamlat deh land and actually being used for common purposes since 1941 cannot be held to be in possession of co-sharer when co-sharer also admits use of such land for common purposes.

17. The learned Court of first instance erred in relying solely on the evidence of the approved draftsman to conclude that the plaintiff was in possession of the suit land merely because the draftsman had prepared the site



plan of the property. Similarly, the Court improperly placed reliance on the self-serving oral evidence of PW-2, the plaintiff’s attorney, to conclude possession in favour of the plaintiff.

18. The plaintiff was never in possession of the portion of the land under the pond, which has been used for common purposes and, by virtue of the definition of *Shamlat Deh* under Section 2(g)(3) of the Punjab Village Common Lands (Regulation) Act, 1961, vests in the Gram Panchayat or its successor, the Municipal Council.

19. Therefore, no fault can be found with the findings of the learned First Appellate Court. It is clearly established that the plaintiff is not in possession of the suit land, as half of Khasra No. 921 is covered by the pond and accordingly is in possession of the Gram Panchayat, or its successor, the Municipal Council, under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961. No substantial question of law arises from the present case. Accordingly, the appeal is dismissed.

16.09.2025
manoj

(PARMOD GOYAL)
JUDGE

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