



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

RSA No. 1633 of 1993 (O&M)

Date of Decision: 03.07.2025

Sada Ram (since deceased) through LRs

..... Appellants

Versus

Joti Ram alias Joti

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Pritpal Singh Miglani, Advocate
for the appellant(s)-defendant.

Mr. A.P.S. Tung, Advocate
for the respondent-plaintiff.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 21.05.1990 and 04.05.1993 passed by the Courts below, whereby a suit for permanent injunction, filed at the instance of respondent-plaintiff, was decreed.

[2] Briefly stating, respondent-plaintiff filed a suit for grant of permanent injunction with a prayer for restraining the appellant-defendant from dismantling or filling-up the Well, situated in the land measuring 17 Marlas comprised in Khewat No. 301, Khatauni No. 471 and Killa No. 2097//1464 (0-3) and 1464/789 (0-4) situated in Bahadurpur, Tehsil and District Hoshiapur. It was pleaded that the land underneath the Well was jointly owned by the respondent-plaintiff, his brother-Moti Ram as well as other co-owners including the appellant-defendant, but still the appellant-

defendant without any authority was trying to change the nature and user of the land by filling up the Well. Hence, the suit was filed.

[2.1] Upon notice, the appellant-defendant appeared and filed written statement. The factum of joint ownership of the land in dispute between the appellant-defendant, respondent-plaintiff as well as various other co-owners was admitted, however, it was denied that any Well was in existence over the land in dispute; rather it was pleaded that the Well was situated in Khasra No. 788 with which the respondent-plaintiff was having no concern at all as the same was exclusively owned by the appellant-defendant and thus, the suit, filed at the instance of respondent-plaintiff, was liable to be dismissed.

[3] On the basis of pleadings of the parties, the trial Court framed the following issues:-

- “1. *Whether the well exists in the disputed land? OPP*
2. *Whether the plaint is liable to be rejected for want of copy of jamabandi? OPD*
3. *Whether the plaintiff is entitled to the grant of perpetual injunction as prayed for? OPP*
- 3(a) *Whether the report of the LC is liable to be set aside ?
OPP*
4. *Relief. ”*

[4] Learned Sub Judge, First Class, Hoshiarpur, (**hereinafter to be referred as “trial Court”**), vide judgment and decree dated 21.05.1990, decreed the suit, filed at the instance of respondent-plaintiff, while holding that the Well in question existed in Khasra No. 2097/1464 and was jointly owned by the parties, thus, appellant-defendant was having no right to dismantle or otherwise change the user of the Well in dispute.

[5] Aggrieved thereof, the appellant(s)-defendant filed the first appeal, which came to be dismissed vide judgment and decree dated 04.05.1993 passed by the Court of District Judge, Hoshiarpur (**hereinafter to be referred as “First Appellate Court”**). Both the Courts below went to discard the report dated 26.10.1989 by the Local Commissioner.

[6] Impugning the judgments and decrees dated 04.05.1993 and 21.05.1990, learned counsel for the appellant(s)-defendant submits that as per report dated 26.10.1989 given by the Local Commissioner (Sarabjit, Retired Kanungo), who came to be appointed by the trial Court, it was established on record that the Well in question formed part of Khasra No. 788. It was further submitted that as per *Jamabandis* (Exhibits D-3 & D-4) and Khasra Girdawari (Exhibit D-5), it was proved on record that Khasra No. 788 was exclusively owned by the appellant-defendant and thus the respondent-plaintiff was having no concern with the Well in question and as such, the suit filed at the instance of respondent-plaintiff was liable to be dismissed.

No other argument has been raised on behalf of the appellant(s)-defendant(s).

[7] On the other hand, learned counsel for the respondent-plaintiff submits that the report dated 26.10.1989 made by the Local Commissioner was rightly discarded by the Courts below as the demarcation was never carried out by fixing three *pucca* points. He also submits that even as per the *Jamabandis* (Exhibits P-2, P-3 & P-5), it was proved on record that the Well in question was existing in Khasra No. 2097/1464 which was jointly owned by the parties, besides the other co-shares and as such, the suit filed at the

instance of respondent-plaintiff was rightly decreed and the appeal in hand is liable to be dismissed.

[8] After hearing learned counsel for the parties and having gone through the paper-book / records, I am unable to find substance in the submission(s) made on behalf of the appellant(s)-defendant(s).

[9] A perusal of the evidence available on record in the form of *Jamabandis* (Exhibits P-2, P-3 & P-5) clearly establishes on record that the non-functional Well (*Gair Mumkin Chah Pukhta*) was existing in Khasra No. 2097/1464, which was jointly owned by the parties to the suit and also the other co-owners. It was further established on record that in the report dated 26.10.1989 given by the Local Commissioner (Sarabjit, Retired Kanungo), the measurement and demarcation was never carried out from three fixed *pucca* points and thus, was rightly discarded by the Courts below being in complete disregard to the standing instructions of the Financial Commissioner incorporated in Volume-I of the Rules and Orders of the Hon'ble High Court.

Furthermore, from the *Jamabandis* (Exhibits D-3 & D-4), which were proved on record by the appellant-defendant, the land comprised in Khasra No. 2406 / 788 measuring 3 Marlas was jointly owned by the appellant-defendant with Joti and the same was recorded as *Gair Mumkin Abadi* with no mention about any kind of Well located therein.

[10] Accordingly, in view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below and there being no misreading or misinterpretation of either the pleadings or the evidence available on record;

the present appeal, being devoid of merits, is hereby **dismissed**.

[11] Since, the main appeal has been decided / dismissed, no orders are required to be passed in the pending application(s) and the same shall stand disposed off.

July 03, 2025

'dk kamra'

(HARKESH MANUJA)

JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>