



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

117

RSA-2977-1994

Date of decision : 04.04.2024

Parbhati**..... Appellant****versus****Duli Chand (deceased) through LRs and ors.****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Ajay Jain, Advocate
for the appellant.

Mr. Chanderhas Yadav, Advocate and
Mr. Harjit Yadav, Advocate
for respondents Nos.1 to 7.

PANKAJ JAIN, J. (ORAL)

1. Plaintiff is in appeal.
2. Plaintiff filed suit for permanent injunction with an alternate relief of possession. As per the plaintiff, plaintiff alongwith proforma defendants is owner in possession of land marked by letters EDJGJF in the site plan attached to the plaint. Plaintiff claimed that the plot shown by letters FEDH is an ancestral property owned by plaintiff and proforma defendants. The same is being used by them for tethering cattle. Defendants are owners in possession of plot marked by letters ABCDE. Ancestral plot owned by plaintiff and defendants No.7 to 9 is situated in the northern side of the residential house of the defendants. They made an attempt to open door at point X. The plaintiff himself



prayed for decree of permanent injunction restraining defendants from opening any gate at mark X and from demolishing any part of the wall shown by letters E and D.

3. Suit was contested by defendant No.1 to 4. As per defendants, plaintiff deliberately did not identify the property by Khasra numbers. The land shown by letters EDJKF is part of the property of the defendants. Defendants pleaded that neither the plaintiff nor the proforma defendants have ever remained in possession of the suit property and thus, the suit seeking decree of permanent injunction is not maintainable. The ownership of the plaintiff over the suit property is denied. Defendant No.5 filed separate written statement. Ownership of the plaintiff alongwith proforma defendants over the suit land is denied. It is alleged that plaintiff made an attempt to close rasta by constructing wall. The plaintiff was stopped. Plaintiff has no concern with the suit property.

4. On the basis of the pleadings, following issues were framed:-

“1. Whether the plaintiff and defendant No.7 to 9 are owners in possession of the disputed site? OPP

2. Whether the suit is bad for non-joinder of necessary parties?OPD

3. Whether the plaintiff is estopped from filing the present suit?OPD

4. Whether the suit is barred by limitation?OPD

5. Whether the suit is not maintainable in the present form? OPD

6. Relief.”



5. While answering issue No.1, Court of the first instance found that once plaintiff claimed ownership, he was under duty to prove his title over the suit property. Plaintiff failed to prove his ownership or possession over the suit property. On issue No.2, Trial Court upheld the objection raised by the defendants with respect to non-joinder of parties. It was held that admittedly Rewati and Dewati daughters of Sheo Sahai have right to inherit the share of Sheo Sahai-deceased alongwith their brothers Sher Singh, Lal Singh and Sunder Singh. None of them having been impleaded as party, the suit was bad for non-joinder of parties.

6. The Lower Appellate Court has upheld the findings recorded by the Trial Court.

7. Learned counsel for the appellant has assailed the findings recorded by the Courts below. It has been contended that the defendants claim to be owners in possession of the suit property alleging that the same was comprised in Ahata No.41, Ghat No.54. Site plan Ex.D-1 shows that the suit property is neither part of Ahata No.41 nor Ghat No.54. Defendants having failed to prove that the suit property was part of their property comprised in Ahata No.41, Ghar No.54, the Trial Court ought to have decreed the suit filed by the plaintiff.

8. On being specifically asked as to what evidence was led by the plaintiff to prove his title and ownership over the suit property, counsel for the plaintiff has not been able to point out any piece of



cogent evidence apart from the bald assertions made in the plaint.

9. Plaintiff having failed to prove his ownership of possession over the suit property, this Court finds that the Courts below rightly non-suited the plaintiff dismissing his suit seeking decree of permanent injunction with alternative relief of possession. Plaintiff is required to stand on his own legs, weakness in the stand of defendant cannot enure any benefit in favour of the plaintiff.

10. Findings no merit in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

04.04.2025
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No