



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

(203)

RSA-1719-1995 (O&M)Date of Decision:-**19.11.2025**

PREM CHAND

... Appellant

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Ashish Gupta, Advocate with
Mr. Gurdeep Singh Bidhan, Advocate
for the appellant.

Mr. Manish Dadwal, AAG, Haryana.

VIRINDER AGGARWAL, J. (Oral)

1. The present Regular Second Appeal (here-in-after referred to as “RSA”) has been filed challenging the concurrent judgments and decrees passed by the learned Courts below, whereby the suit instituted by the appellant–plaintiff was dismissed in its entirety. The appeal calls for a re-examination of both the facts and the law applied by the Courts below, with a view to ascertain whether any error, misappreciation of evidence, or legal infirmity has occasioned a miscarriage of justice, thereby warranting interference in the exercise of this appellate jurisdiction.

2. The appellant–plaintiff instituted the present suit seeking a permanent injunction restraining the defendants from demolishing his shop, as fully described in the head-note of the plaint and delineated as ‘ABCD’ in the site plan annexed thereto. The plaintiff contends that the shop is ancestral



property, having existed for over a century, and alleges that the defendants are attempting to forcibly demolish the same. It is further averred that a notice dated 27.12.1986 was served upon the plaintiff, threatening demolition. On the basis of these allegations, the plaintiff seeks equitable relief in the form of a permanent injunction to prevent the threatened illegal interference with his ancestral property, thereby safeguarding his rights and possession over the shop.

3. The defendants contested the suit by denying the plaintiff's ownership and contended that the plaintiff has been in unauthorized possession of State land, indicated in green on the site plan annexed to the written statement. It was further alleged that the plaintiff has encroached upon the said land for the past four years, without any lawful title or permission. The defendants averred that multiple notices were served upon the plaintiff directing him to vacate the encroached area, all of which were ignored. Consequently, it was submitted that the plaintiff cannot claim protection of possession and is not entitled to equitable relief in the form of injunction against demolition.

4. The plaintiff filed a replication, expressly reiterating all the averments contained in the plaint and specifically denying the allegations set forth in the written statement. Upon a careful examination of the pleadings and the rival contentions of the parties, the learned Trial Court, after due application of mind, distilled the disputes into precise issues to facilitate an orderly and effective adjudication of the real controversies. The issues were framed with reference to the pleadings, the reliefs sought, and the factual matrix, so as to ensure that the Court could systematically address and



resolve the substantive questions in dispute. The issues, so formulated, were as follows: -

1. Whether the plaintiff is entitled to the relief of injunction restraining defendants from demolishing the shop in dispute?OPP
2. Whether the plaintiff is owner in possession of the suit property?OPP
3. Whether notice dt.07.12.88 is wrong, illegal and not binding on the rights of the plaintiff?OPP
4. Whether the plaintiff has no cause of action to sue?OPD
5. Whether the suit is bad for want of notice u/s 80 CPG?OPD
6. Relief.

5. For the purpose of adjudicating the issues so framed, both parties were afforded full and adequate opportunity to adduce evidence in support of their respective claims and defences. Upon a careful appreciation of the material placed on record and after hearing the arguments advanced by learned counsel for the parties, the learned Sub-Judge, First Class, Tohana, dismissed the plaintiff's suit. Aggrieved by the judgment and decree, the appellant-plaintiff preferred an appeal before the Additional District Judge, Hissar, which, after due consideration, was also dismissed. Consequently, the appellant/plaintiff remained dissatisfied with the concurrent findings rendered by the Courts below, prompting the present proceedings before this Court.

6. Aggrieved by the concurrent findings of fact and law rendered by the Courts below, the appellant-plaintiff has invoked the jurisdiction of this Court by way of the present RSA, seeking interference with the impugned judgments and decrees on the grounds of alleged misappreciation of evidence, legal errors, and miscarriage of justice.



7. I have accorded my careful and anxious consideration to the submissions advanced by learned counsel for the respective parties and, with their valuable assistance, have undertaken a comprehensive and meticulous examination of the entire record placed before the Court, including the pleadings, evidence, and the concurrent findings of the Courts below, to ensure that the matters in controversy are adjudicated fairly, accurately, and in accordance with law.

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel for the appellant contended that the Courts below committed material irregularities and failed to appreciate the pleadings and evidence on record with due care and diligence. It was submitted that the learned Additional District Judge relied upon the demarcation report Ex.DW3/A, erroneously concluding that the suit property forms part of Khasra No. 521, and further holding that the plaintiff had allegedly encroached upon a portion thereof, despite the plaintiff not disclosing this in the plaint. Counsel emphasized that Ex.DW3/A pertains to



the Tohana–Chandigarh road and Khasra No. 255, and not Khasra No. 521, a fact ignored by both Courts.

9.1. It was further argued that the plaintiff's settled possession of the suit land having been established is sufficient for the grant of injunction against forcible dispossession, and that even in the absence of proof of ownership, a person in lawful and settled possession is entitled to protection under the principles governing possession and injunction.

10. Learned State counsel, on the other hand, contended that the findings recorded by the Courts below are unimpeachable and free from any legal or factual infirmity. It was submitted that both Courts have correctly concluded that the plaintiff had encroached upon a portion of the land belonging to the defendant–State. Consequently, the plaintiff is not entitled to the grant of the injunction sought, and there is no justification for interference with the concurrent conclusions rendered by the lower Courts.

11. It is undisputed that the defendant–State, in its written statement, has categorically admitted the possession of the plaintiff over the suit property for more than four years. Although it has been alleged that the plaintiff has encroached upon a portion of the State land, the plaintiff has placed on record receipts Ex.P1 and Ex.P2, evidencing payment of house tax in respect of the suit property to the Municipal Committee.

11.1. While the plaintiff does not possess documentary title, once the possession is admitted by the defendant–State, the burden lies upon the State to prove any alleged encroachment. The plaintiff contends that the suit property forms part of Khasra No. 521, whereas the State relied upon demarcation report Ex.DW3/A and site plan Ex.DW3/B. A careful perusal of Ex.DW3/A reveals that the demarcation pertains to the Tohana–Chandigarh



road and Khasra No. 255/3/1, not Khasra No. 521, thereby rendering the State's reliance misplaced.

11.2. In light of the admission of possession, the plaintiff is deemed to be in settled possession, and the law is well-settled that even a trespasser in settled possession can be dispossessed only in accordance with due process of law. Accordingly, the findings of both Courts below, denying the plaintiff protection against forcible dispossession, are contrary to settled legal principles.

11.3. The appeal of the appellant-plaintiff is, therefore, allowed, and the defendants are restrained from forcibly dispossessing or demolishing the suit property, except in accordance with due process of law. The defendants remain entitled to pursue legal remedies should it be established that any part of the suit property constitutes encroachment on a public road.

12. In view of the disposal of the main matter, any and all pending miscellaneous applications, motions, or proceedings connected therewith, if still pending, are hereby disposed of as infructuous. The parties are directed to note that no further action shall be required in respect of such ancillary applications, and the record may be updated accordingly to reflect the finality of the adjudication in the principal matter.

19.11.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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