

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-2147-1998 (O&M)****Reserved on: 10.03.2025****Pronounced on: 12.03.2025****PREM NATH (DECEASED) THROUGH HIS LRS AND OTHERS****. . . .APPELLANTS****Vs.****DURGIANA COMMITTEE, AMRITSAR AND ANOTHER****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by:- Mr. V.K. Sandhir, Advocate, for the appellants.

Mr. Neeraj Yadav, Advocate, for respondent No.1.

Mr. Lalit Attri, Advocate, for respondent Nos.2 & 3.

DEEPAK GUPTA, J.

Suit for mandatory injunction with consequential relief of permanent injunction regarding the property in dispute filed by plaintiffs (*appellants herein*) was decreed by Id. Civil Judge (Jr. Divn.), Amritsar vide judgment dated 23.12.1993, issuing a decree of mandatory injunction by directing defendant No.1-Durgiana Committee, Amritsar (*now respondent No.1*) to demolish the wall marked AB measuring 70 ft. in length and 7 ft. in height, as shown in site plan (Ex.P1). However, suit of the plaintiffs seeking decree of declaration as well as permanent injunction was dismissed.

2. Both the parties went in appeal. Plaintiffs filed the appeal submitting that trial Court was not justified in declining the prayer of declaration for ownership of the plaintiffs qua the property in dispute i.e. a path measuring 2 kanal leading from Khasra Nos.591 to 590. On the other hand, defendant No.1-Durgiana Committee, Amritsar filed appeal with the submissions that trial Court was not justified in granting the mandatory injunction and directing the said Durgiana Committee, Amritsar to demolish the disputed wall. Both these appeals were heard together by Id. Additional

District Judge, Amritsar and vide judgment dated 07.05.1998, both the appeals were Dismissed.

3. Against the aforesaid judgments, the plaintiffs have approached this Court by way of the present Regular Second Appeal.

4. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

5. Though the relief for mandatory injunction as sought by the plaintiffs *i.e., appellants herein* has already been granted by the trial Court and finding to that effect has been upheld by the First Appellate Court but the contention raised by of Id. counsel for the appellants before this Court is that ownership of the property was not in dispute and therefore, the Courts below were not justified in commenting or giving any finding on the title to the property in dispute.

6. However, after perusing the entire paper book, this Court does not find any merit in this contention.

7. Perusal of the judgments passed by the Courts below would reveal that although in the head-note of the plaint, plaintiffs-appellants had prayed only for the mandatory injunction to restrain defendant No.1 to dismantle the wall marked by letter 'AB' measuring 70 ft. in length and 7 ft. in height constructed on the property in dispute as shown in red colour in the site plan attached with the plaint on the southern side bearing khasra No.591, Khata No.120 as per jamabandi for the year 1943-44 with consequential relief to restrain the defendants from raising further construction by closing the outlet from free access towards north marked 'D' in the site plan, but in the prayer clause, apart from these reliefs, plaintiffs had also prayed for a decree of declaration that they are entitled to be declared as owners in possession of the path measuring 2 kanal leading from khasra No.591 to 590 touching the main road within a mandate to defendants to direct them not to block or raise any construction over this

path, which is in the ownership of plaintiffs, as has been noticed by the courts below.

8. Apart from above, issue No.1 was specifically framed to the effect that '*whether the plaintiffs are owners in possession of the suit property and are entitled to mandatory injunction and declaration as prayed for*'. Not only this, issue of title was also raised and argued before the first appellate court.

9. It is, thus, clear from the prayer clause of the plaintiffs as well as issue No.1 as framed by the trial court that ownership of the property in dispute was an issue before the Courts below and so, there is no merit in the contention that Courts should not have given any findings on the title to the property in dispute.

10. Proceeding further, it is noticed by the courts below that as per the revenue record, *Chah Bishan Das son of Jawala Dutt, Bhairo Darwaja Lohgarh, Amritsar, Mastil Talab Durgiana* was under the management of Vishwa Nath son of Duni Chand son of Sita Ram along with others. Based upon the entries in the revenue record, the Courts concluded that Vishwa Nath, the father of the plaintiffs was not the owner of the land in dispute and rather, he appeared to be one of the trustees or managers and as such, plaintiffs could not be declared to be owners of the land measuring 0 kanal 12 marla comprised in khasra No.591.

11. Further, plaintiffs had also claimed ownership of the land measuring 2 kanal comprised in path leading from khasra No.591 to 590 by way of adverse possession. In this regard, it has been noticed by the Courts below that plaintiffs sought declaration of title regarding this land to be owner by way of adverse possession, but without disclosing the name of the original owner of the said land measuring 2 kanals. It was further found by the Courts below that plaintiffs had not fulfilled the legal requirements to constitute the adverse possession over the said land. As such, plaintiffs could not be declared owner of the said land by way of adverse possession.

12. Ld. counsel for the appellants before this Court could not convince this Court about any fault in the aforesaid findings of facts as recorded by the Courts below.

13. As such, this Court does not find any ground, whatsoever, to interfere in the well-reasoned concurrent findings of facts as recorded by the Courts below. It has already been noticed that ownership issue was raised by the plaintiffs and so, the Courts were justified in giving finding regarding the title to the property in dispute also.

14. Consequently, this Court does not find any merit in the appeal. Same is hereby dismissed.

12.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>