



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

RSA-3877-1998 (O&M)

Date of Decision :- 30.10.2025

Municipal Council, Rewari

... Appellant

Versus

Sanjay Jain and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Ashish Yadav, Advocate
for the appellant-Municipal Council, Rewari.

None for the respondents.

VIRINDER AGGARWAL, J.(ORAL)

1. The instant Regular Second Appeal (for short 'RSA') has been preferred by the appellant/respondents under Section 41 of the Punjab Courts Act, 1918, assailing the judgments and decrees rendered by the Courts below. The appeal is primarily founded on the contention that the findings recorded by the learned Additional Civil Judge (Senior Division), Rewari and the learned Additional District Judge, Rewari are contrary to law, founded upon a manifest misappreciation of evidence, and have occasioned substantial prejudice to the appellant, thereby warranting the intervention of this Court in exercise of its appellate jurisdiction under the said provision.

2. For the sake of clarity and convenience in the discussion, the parties shall hereinafter be referred to as the plaintiffs and the defendants, corresponding to their respective status before the learned Trial Court. The



salient and material facts forming the foundation of the present proceedings, which are essential for an informed adjudication of the issues, are briefly narrated as follows:-

“The plaintiffs assert ownership and possession of land measuring 3 kanals 19 marlas, comprising Khewat No. 186, Khatoni No. 288, and Khasra No. 311, situated at Rewari. The defendants have allegedly encroached upon a portion of the said land by paving bricks, as shown in red and marked EFGH in the site plan annexed to the plaint.

Despite repeated demands, the defendants have failed to remove the encroachment and have threatened further intrusion. Hence, the plaintiffs seek a permanent injunction restraining the defendants from further encroachment and a mandatory injunction directing them to remove the existing encroachment over portion EFGH.”

3. Upon notice being issued by the learned trial Court the defendants appeared and in their joint written statement, have categorically denied the plaintiffs’ ownership of the suit land, asserting that it has already vested in the Municipal Committee, Rewari. They further contended that bricks were laid on portion EFGH purely for the benefit and convenience of the public. It is also pleaded that the plaintiffs lack locus standi, are barred by estoppel arising from their own conduct, and that the suit is not maintainable in its present form.

4. The respondents/plaintiffs have filed a replication, specifically controverting the averments made in the written statement and reaffirming



the assertions and claims set out in the plaint. Upon a meticulous examination of the pleadings and the respective contentions of the parties, the Court has been pleased to frame the following issues for determination, with a view to securing a focused, comprehensive, and judicious adjudication of the matters in controversy between them, which are as under:-

1. Whether the plaintiff is owner of khasra No.311 of khewat No. 186 situated in the revenue estate of Rewari?OPP.
 2. Whether the site in dispute shown by letters EFGH red in the site plan is part of khasra No.311?OPP.
 3. Whether the site in dispute has vested in municipal committee, Rewari as alleged?OPD.
 4. Whether the plaintiffs are estopped from bringing the present suit by his own act and conduct?OPD.
 5. Whether the suit in its present form is not maintainable?OPD.
 6. Whether the plaintiffs have no locus standi to bring the present suit? OPD.
 7. Relief.
5. The parties were afforded ample opportunity to adduce evidence in support of their respective claims and defense. Upon the conclusion of evidence and after hearing learned counsel at length, the learned Additional Civil Judge (Senior Division), Rewari having carefully considered the pleadings, material on record, and submissions advanced, decreed the suit and observed that *“In light of the foregoing, the suit is decreed with costs, granting a permanent injunction restraining the defendants from disturbing the plaintiffs’ possession over the portion marked ABCD in the site plan (Mark A), and a mandatory injunction directing the removal of the brick*



paving from the encroached area EFGH shown in red thereon.” Aggrieved by this judgment and decree, an appeal was filed before the learned Additional District Judge, Rewari, which was also dismissed by observing that “In view of the foregoing, the impugned judgment and decree dated 29.01.1997 are upheld, and the appeal, being meritless, is dismissed, with parties to bear their own costs. Decree sheet be drawn and records returned accordingly”.

6. The appellant has instituted the present appeal assailing the concurrent judgments and decrees rendered by the learned Courts below, which were duly admitted to regular hearing. Pursuant thereto, notices were issued to the respondents. Although respondent No.1 initially entered appearance through counsel, she subsequently abstained from further participation in the proceedings, while the remaining respondents chose to remain unrepresented. Consequently, the entire record of the subordinate Courts was requisitioned to enable a comprehensive appraisal and judicious adjudication of the matter on its merits.

7. I have heard learned counsel for the appellant at considerable length and accorded due deliberation to his submissions in the context of the pleadings, evidentiary corpus, and the concurrent findings of the Courts below. The record has been scrupulously examined to evaluate the rival contentions and to ascertain ‘*whether the impugned judgments and decrees are vitiated by any error of law, procedural impropriety, or manifest perversity warranting interference in the exercise of appellate jurisdiction?*’

8. With regard to the scope of a second appeal, it is now a well-settled proposition of law that, in Punjab and Haryana, second appeals are to



be treated as appeals under Section 41 of the Punjab Courts Act, 1918, and not under Section 100 of the Code of Civil Procedure. In this context, reliance may be placed on the judgment of the Supreme Court in **Pankajakshi (Dead) through LRs and Others v. Chandrika and Others, (2016) 6 SCC 157**, followed by *Kirodi (since deceased) through LR v. Ram Parkash and Others, (2019) 11 SCC 317*, and **Satender and Others v. Saroj and Others, 2022 (12) Scale 92**. In view of the legal position established by these decisions, no substantial question of law arises that necessitates framing in the present appeal.

9. The learned counsel for the appellant has strenuously contended that both the Courts below have misappreciated and misread the evidence on record, inasmuch as the *Jamabandi* entries, upon which reliance was placed, *ex facie* do not establish the respondents/plaintiffs' possession over the suit property, which is recorded as "*Gair Mumkin Nala*."

10. It is further urged that the learned Courts below have fallen into serious error in "*judicando*", as "*nemo debet esse judex in propria causa*" neither evidence nor witness was adduced on behalf of the respondents/plaintiffs to prove any alleged threat by the appellants/defendants. Moreover, both Courts have *ipso facto* ignored the material fact that the suit property, being *Gair Mumkin Nala*, constitutes a public passage vested in the appellant/Municipal Local Authority, and therefore forms part of the '**res publica**'.

11. Upon a careful perusal of the record, it is evident that no oral testimony was led by the respondents/plaintiffs to substantiate any '**causa justa**' of threat or interference. The only evidence produced comprised



documentary exhibits copies of Jamabandis for the years 1965–66 (Ex.P6), 1977–78 (Ex.P8), and 1983–84 (Ex.P9). The learned Courts below, however, erroneously inferred ownership and possession of the plaintiffs over land measuring 3 Kanals 19 Marlas, comprised in Khasra No. 311, while the said entries *prima facie* show possession of the District Board, and the land classified as Gair Mumkin Nala.

11.1. ‘*Quod erat demonstrandum*’, the findings of both the Courts below are vitiated by misreading and non-appreciation of evidence, rendering their judgments unsustainable in law. Consequently, the present appeal stands allowed, the impugned judgments and decrees are set aside, and the suit of the respondents/plaintiffs is hereby dismissed.

12. Since the principal matter has been adjudicated and finally disposed of on merits, all pending miscellaneous applications, if any, shall stand disposed of accordingly, as no separate orders are required thereon. No further directions are deemed necessary in view of the final determination of the main case.

30.10.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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