



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

RSA-2300-2023 (O&M)
Reserved on : 10.07.2025
Pronounced on : 21.07.2025

SATBIR AND ANOTHER

.... Appellants

VERSUS

KANWAR SINGH (DECEASED) THR LRS & ORS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Shaveta Sanghi, Advocate for
Mr. Lokesh Sharma, Advocate for the appellants.

ALKA SARIN, J. (ORAL)

CM-7740-C-2023

1. This is an application for condonation of delay of 29 days in filing the main appeal.

2. For the reasons stated in the application, the same is allowed and the delay of 29 days in filing the main appeal is condoned.

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3. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 04.05.2018 passed by the learned Trial Court whereby their suit was partly decreed and the judgment and decree dated 21.12.2022 passed by the learned First Appellate Court whereby the appeal filed by the plaintiff-appellants herein was dismissed and the appeal filed by the defendant-respondents was allowed thereby dismissing the suit filed by the plaintiff-appellants in *toto*.

4. Brief facts relevant to the present *lis* are the plaintiff-appellants herein filed the present suit for declaration with consequential relief of

permanent injunction. It was averred in the plaint that the ancestors of the parties were owners in possession of the land situated in Village Titoli, Tehsil and District Rohtak. The plaintiff-appellants came to know at the time of consolidation that their shares had not been mentioned properly according to the earlier existence. It was averred that the ancestors of defendant-respondents No.1 and 2 had been shown as owners of more than their shares whereas land of Khewat No.96 to 98 was never partitioned before consolidation. It was further the case that the plaintiff-appellants had moved an application under Section 42 of Consolidation Act and that the defendant-respondents were trying to remove the earth from Killa No.108/4, 5 of Khewat No.98 which was joint land between the parties being *tibba*. It was further contended that the defendant-respondents had no right to remove the earth as proceedings were still pending.

5. On notice the defendant-respondents No.1 and 2 appeared and filed their written statement raising preliminary objections regarding maintainability, estoppel, *locus standi* and cause of action. On merits it was stated that the plaintiff-appellants had not disclosed the details of the property in which their ancestors were owners in possession. It was further the stand taken that the defendant-respondents were owners in possession of property in Khewat No.98/89, Khatoni No.106 total measuring 970 Kanals 15 Marlas, in which Killa No.108/4, 5 were shown exclusively owned and possessed by the defendant-respondents. It was further the stand taken that the suit had been filed after a period of sixty-two years. Defendant-respondent No.3 stated that he had no objection to the suit being decreed.

6. Replication was filed. On the basis of the pleadings the following issues were framed :

1. Whether the plaintiff and defendants are joint owner in possession of suit land as mentioned in para No.2 of the plaint ? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiffs are estopped from filing the present suit by his own act and conduct ? OPD
6. Whether the plaintiffs have suppressed the material facts from the Court ? OPD
7. Whether the suit of plaintiff is hit by the principle of *res judicate* ? OPD
8. Whether the suit of plaintiffs is bad for mis-joinder and non-joinder of necessary parties ? OPD
9. Whether the suit of plaintiff is time barred ? OPD
10. Relief.

7. The Trial Court vide impugned judgment and decree dated 04.05.2018 partly decreed the suit restraining the defendant-respondents from removing the earth from Killa No.108/4, 5 till the decision of the application

under Section 42 of the Consolidation Act. Aggrieved by the said judgment and decree of the Trial Court, two appeals were preferred - one by the plaintiff-appellants herein and another by the defendant-respondents. Vide impugned judgment and decree dated 21.12.2022 passed by the First Appellate Court, the appeal filed by the plaintiff-appellants was dismissed and the appeal filed by the defendant-respondents was accepted thereby dismissing the suit of the plaintiff-appellants in totality. Hence, the present regular second appeal by the plaintiff-appellants.

8. The learned counsel for the plaintiff-appellants has contended that the First Appellate Court has erred in dismissing his suit. It is urged that the suit land was joint between the parties as per jamabandi for the year 1943-44 and hence equal share ought to have been given when the consolidation took place. It is further contended that at the time of the consolidation, equal shares were not given to the ancestors of the plaintiff-appellants and the defendant-respondents. Learned counsel for the plaintiff-appellants has relied upon the jamabandi for the year 1943-44 (Ex.P-9) to contend that the land was joint between the parties. No argument was raised by the learned counsel for the plaintiff-appellants qua the injunction not having been granted.

9. Heard.

10. In the present case the relief sought is for declaration that the ancestors of the plaintiff-appellants and the defendant-respondents were joint owners of the suit properties comprised Khewat Nos.35, 36, 37 and 43 as per the jamabandi for the year 1943-44 (Ex.P-9), post consolidation numbers being Khewat Nos.96 to 98. The First Appellate Court held that the jamabandi for the year 1943-44 (Ex.P-9) revealed that the land comprised in Khewat

No.35 was standing in the name of Chet Ram son of Gokul, Rattan son of Jai Lal in equal shares and land of Khewat No.36 was shown to be in the name of Rai Singh son of Dhanpal and the land comprised in Khewat No.37 was shown in the name of Bhagwana son of Gurdial Prabhu son of Nahna. Land comprised in Khewat No.43 was to be shown in the joint ownership of all the ancestors of the parties but the said land measured only 2 Kanals 3 Marlas out of which 1 Kanal 10 Marlas was reflected as *Banjar Kadim* while 0 Kanal 13 Marlas was reflected as *Gair Mumkin Late*. Whereas, the land qua which the injunction was sought is Killa No.108/4, 5 of Khewat No.98 which is agricultural land. Specific finding was given that post consolidation in the year 1952, the land reflected in Khewat Nos.35, 36 and 37 was not joint and that the same entries had been reflected starting from the year 1960-61 till date wherein the new khewat numbers had been reflected as Khewat No.96 to 98. Learned counsel for the plaintiff-appellants had been unable to point out to any evidence on the record to even remotely suggest that the land was joint between the parties.

11. The First Appellate Court had further observed that the proceedings under Section 42 of the Consolidation Act with regard to the *rasta* only, which was reflected in the observations made in Ex.P-2, that the matter regarding the partition had been dismissed observing that the same was not covered under the provisions of Section 42 of the Consolidation Act. In the absence of any evidence to even remotely show that the land was joint between the parties, the impugned judgment and decree passed by the First Appellate Court cannot be faulted.

12. No question of law, much less substantial question of law arises in the present case, which requires determination by this Court. The appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.07.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No