

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-1011-2021 (O&M)****Date of decision: 11.02.2025****Nirmal Singh and another****...Appellant(s)****Vs.****Janga Ram and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Munfaid Khan, Advocate for the appellants.***********NIDHI GUPTA, J.**

The defendants No. **1 and 2** are in second appeal before this Court against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiff/respondents No. 1 and 2 herein, for permanent injunction has been decreed by both the courts below.

2. The brief facts of the case as set out in the plaint are that the suit property is a Gair Mumkin Rasta/Gali measuring 07 Marla comprised in Khewat No.143/136 Khatoni No.236 Khasra No.201(0-7) situated within the revenue estate of village Rattangarh Kakrali, Tehsil Pehowa, District Kurukshetra vide jamabandi for the year 2007-08. The plaintiffs are the permanent residents of village Rattangarh Kakrali and have right to protect the property of Gram Panchayat i.e. rasta vests in defendant No.3 Gram Panchayat Rattangarh Kakrali which is its true owner. Defendants No.1 and 2 are in unauthorized possession over some portion of the suit property as



shown in demarcation report dated 09.09.2009 conducted by Revenue Officials. Defendants No.1 and 2 colluded with the Sarpanch of Gram Panchayat/ defendant No.3 and are bent upon to encroach upon portion of the suit property by raising construction. Plaintiffs and other inhabitants of the village shall suffer irreparable loss and injury if the defendants are not restrained from encroaching the suit property and from raising construction over it. Plaintiffs requested the defendant No.3 to initiate legal proceedings against defendants No.1 and 2 but to no avail as there is collusion between them. Defendants came on the spot and tried to raise construction but could not succeed due to timely intervention of the plaintiffs and other respectable persons of the locality. Defendants have threatened to raise construction over the suit property. Hence, the suit.

3. Upon notice defendants no.1 and 2 appeared and filed their written statement resisting the suit on multiple grounds by submitting that Balkar Singh and Lal Singh are residents of village Rattangarh Kakrali who have filed a suit under Section 7(2) of P.V.C.L Act before Assistance Collector 1" Grade, Pehowa which is still pending. The Assistant Collector 1" Grade, Pehowa had ordered demarcation on 05.12.2013. On 12.06.2014 Shri Sumer Singh retired Kanoongo demarcated the suit property. It was mentioned in the report that Khasra No.201 is a Rasta which has been encroached by Jagga Ram, Karnail Singh, Nehal Singh and Satbir Singh sons of Musadi. Defendants filed a suit for possession against plaintiff which is still pending. The defendants denied that the disputed land vests in Gram Panchayat. After denying the rest of the averments of the plaint, they



prayed for dismissal of the suit. Subsequently, defendants No. **2 and 3** were proceeded against exparte before the learned trial Court. No replication was filed.

4. Vide order dated 15.09.2015, following issues were framed:-

1. Whether the plaintiff is entitled for a decree for permanent injunction thereby restraining the defendants no.1 and 2 from further encroaching upon the portion of street in question and from raising further construction over the portion of street, forcibly and illegally or in any manner as prayed for ?OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD
4. Relief.

5. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court decided issue No.1 in favour of the plaintiffs and against the defendants; issues No. 2 and 3 against the defendants and in favour of the plaintiffs; and accordingly decreed the suit of the respondents/plaintiffs vide judgment and decree dated 11.05.2017. The appeal filed by the present appellant No.1 was dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 05.03.2020. Hence, the present second appeal.

6. Learned counsel for the appellants submits that the suit of the respondents/plaintiffs has been wrongly decreed on the basis of incorrect facts. It is submitted that the learned courts below have erred in passing the impugned judgments and decrees as they had failed to consider the fact that proceedings under section 7 (2) of Punjab Village Common Lands Act



are still pending in the court of Id. A.C. Ist Grade, Pehowa and are not finally decided yet. Thus, finding given by both the Id. Courts below that SDM Pehowa has ordered the dispossession of the appellants from the suit property is erroneous and illegal and against the fact as the same is still pending adjudication. It is further argued that as per latest demarcation report dated 12.06.2014, conducted on the directions of AC 1st Grade Pehowa vide order dated 05.12.2013, clearly shows that it is the plaintiffs and their brothers namely Karnail Singh and Satbir Singh, who are in unauthorized and illegal possession over the suit property and not the present appellants. However this fact of the lis is not considered by both the Id. Courts below and as such impugned judgments and decrees are liable to be set aside. It is accordingly prayed that the present appeal be allowed.

7. No other argument is raised on behalf of the appellants.

8. I have heard learned counsel for the appellants and also perused the case file in minute detail.

9. I find no merit in the submissions advanced on behalf of the appellants. The learned courts below upon appraisal and evidence before it concluded that the appellants/defendants No. 1 and 2, had filed a case under Section 7(2) of Punjab Village Common Lands Act, before the Assistant Collector 1st Grade Pehowa, regarding the suit property which is still pending in which the learned Assistant Collector 1st Grade, Pehowa had appointed retired Kanungo as Local Commissioner and directed for



demarcation of the suit property. The said land was demarcated on 12.06.2014 mentioning therein khasra No. 201 is an aam rasta.

10. Furthermore, the plaintiffs have placed on record the copy of jamabandi for the year 2007-08 (Ex.P1) which reflects that the suit property is *gair mumkin rasta* measuring 0 K 7 Marlas comprised in khasra No. 201.

11. Further, the defendants No.1 and 2 in their cross-examination as DW1 and DW2 had admitted that suit property i.e. gali in question was owned by defendant No.3 Gram Panchayat and SDM had ordered their dispossession from the suit property. In this regard, relevant findings are contained in para Nos. 17 and 18 of the judgment dated 05.03.2020 passed by the Id. lower appellate court which read as under:-

“17. Even otherwise also, Balkar Singh and Lal Singh residents of the same village Rattangarh @ Kakrali have also filed an application under Section 7 (1) (2) of the Punjab Village Common Lands Act seeking ejectment of present defendants No.1 & 2 by way of removal of the encroachment made by them over an area of 165 sq. feet (55 feet x 6 feet divided by 2) of the Gair mumkin gali comprised in khasra No.201. It is the case of the defendants that during the said proceedings, DW3 Sumer Singh, retired Kanungo was appointed as Local Commissioner for conducting the demarcation of the suit property i.e. gali in question, by Sub Divisional Magistrate-cum-Assistant Collector 1 Grade, Pehowa. As per the order of SDM, Pehowa, DW3 Sumer Singh demarcated the suit property on 12.6.2014 and proved his demarcation report as Ex.DW3/A, wherein, it is mentioned that khasra No.201 is a Raasta and this rasta is



encroached 11 feet in North, 9 feet in south and 10 karm (55 feet) in East and west, area 0-2M by Janga Ram, Nehal Singh (present plaintiffs). Karnail Singh, Satbir Singh sons of Masuddi son of Biru. Feeling aggrieved with the said demarcation report Ex.DW3/A, applicant Balkar Singh filed objections against the said demarcation report in the Court of SDM, Pehowa, Ex.P4, to the effect that the demarcation has not been conducted as per the instructions of the Financial Commissioner Revenue, and that the respondents got procured a false report, in collusion with the private Kanungo. It is pertinent to mention here that the objection filed by application Balkar Singh had been allowed vide order Ex.P5 passed by the SDM, Pehowa. Even otherwise also, in their cross-examination, both the present defendants No.1 & 2 have admitted that the Court of SDM Pehowa has ordered their dispossession from the suit property and the identity of the suit property is not disputed.

18. *As above, since defendants No.1 & 2 while appearing in the witness-box as DW1 and DW2 themselves admitted that the Court of SDM Pehowa has ordered their dispossession from the suit property clearly proves that they are in unauthorized possession of the suit property and the said fact is also vividly proved from the demarcation report Ex.P2. So, the learned trial Court has rightly held that the Court of SDM, Pehowa had ordered that they be dispossessed from the suit property. It is clear from the evidence Ex.P2 that defendants had illegally encroached upon the suit property which is admittedly the property of Gram Panchayat and the plaintiff has been able to discharge his onus, thus, issue is decided in favour of the plaintiffs and against the defendants.”*

12. Learned counsel for the appellants has been unable to dispute or controvert the above said findings.

13. Hence, the present regular second appeal is hereby **dismissed.**

14. Pending applications, if any, stand disposed of.

11.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No