

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-2793-2024 (O&M)****Date of Decision : 28.07.2025**

Gurmail Singh

....Appellant

VERSUS

Gurjit Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.V.S. Chugh, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-11484-C-2024 & CM-11485-C-2024**

1. For the reasons stated in the applications, the same are allowed. The delay of 70 days in re-filing and 108 days in filing the present appeal is condoned.

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2. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 28.04.2023 passed by the Trial Court and the judgment and decree dated 04.01.2024 passed by the First Appellate Court.

3. The plaintiff-appellant filed the present suit for permanent injunction with respect to land measuring 57 Kanals 12 Marlas as fully described in the plaint. It was averred by the plaintiff-appellant himself that an application for partition is pending before the concerned authorities. It was further averred that part of the suit land is situated on the main Mansa-Sunam Road which is more valuable than the other land and that the

defendant-respondents without getting the same partitioned were raising construction on the same. It was further averred that in case the defendant-respondents succeed in raising construction, irreparable loss would be caused to the plaintiff-appellant.

4. On notice, defendant-respondent Nos.1 to 3 appeared and filed their joint written statement. Defendant-respondent Nos.4 and 5 filed their separate written statement. It was averred by defendant-respondent Nos.1 to 3 that the suit land has been partitioned between the parties as a family partition has been effected between the co-sharers and each co-sharer was in possession of his/her respective share. It was further averred that the construction has already been raised by them over the suit land. It was further the stand taken by defendant-respondent Nos.1 to 3 that they had purchased specific Khasra Nos.68//16/1 (4-0), 68//16/2 (4-0) and 25/1 (4-0) through registered sale deeds dated 29.12.2003 and 30.01.2006. It was further the stand taken by defendant-respondent Nos.1 to 3 that they had also purchased the land measuring 1 Kanal 5 Marlas through registered sale deed dated 20.04.2017 from Heera Lal son of Madan Lal, who was exclusive owner in possession over the suit land. It was further the stand taken that they had raised their residential houses on part of the suit land about 15 years ago. Defendant-respondent Nos.4 and 5 also filed their separate written statement taking a similar stand.

5. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the plaint ? OPP
2. Whether the present suit is not maintainable ? OPD
3. Whether the plaintiff has not come to the court with clean hands and concealed the material facts from the court, if so its effect ? OPD
4. Relief

6. Vide judgment and decree dated 28.04.2023 the suit was dismissed by the Trial Court. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 04.01.2024. Hence, the present regular second appeal.

7. Learned counsel for the plaintiff-appellant would contend that the defendant-respondents are raising construction blocking the passage to the house of the plaintiff-appellant hence, both the Courts have erred in dismissing the suit of the plaintiff-appellant.

8. I have heard learned counsel for the plaintiff-appellant and have also perused the paper-book.

9. In the present case the suit was filed by the plaintiff-appellant herein averring therein that the plaintiff-appellant and defendant-respondents are co-sharers in land measuring 57 Kanals 12 Marlas situated at village Malakpur, Tehsil and District Mansa as fully described in the plaint and that an application for partition was also pending before the AC Ist Grade Mansa. The suit was filed on the ground that the construction being raised by

defendant-respondents was on the land which abuts the main road and was of a higher value and that the defendant-respondents be restrained from carrying out the construction and changing the nature of the suit land. It was never the case set up by the plaintiff-appellant that any path was being obstructed nor any evidence was led in this regard. It is an admitted case that the partition proceedings are already pending. It has also come on the record that the defendant-respondents had raised their construction in 2003 whereas the plaintiff-appellant had purchased the suit property in 2019. During the course of arguments, learned counsel for the plaintiff-appellant also admitted that the construction was already there when the property was purchased by the plaintiff-appellant in the year 2019. A faint argument was raised by learned counsel for the plaintiff-appellant that specific khasra numbers were not purchased by the defendant-respondent. However, a categorical finding has been recorded by both the Courts that specific khasra numbers were purchased by defendant-respondent Nos.1 to 3 in the year 2003, which fact was admitted by the plaintiff-appellant himself. The First Appellate Court further returned the following findings :

“The plaintiff by way of this suit has tried to say that defendants are going to raise construction over specific portion of land whereas in his cross-examination, he stated that the construction was raised much prior to purchase of land by him. So, in these circumstances, it can be said that plaintiff has not come to court with clean hands. He has twisted the facts. No fact or evidence has

come from the side of plaintiff that the defendants are now trying to raise construction over any piece of joint land. The construction was raised by them much prior to the purchase of property by the plaintiff. The learned trial court has properly appreciated the facts, circumstances as well as evidence on file.”

10. This Court is not convinced that any passage leading to the house of the plaintiff-appellant was obstructed as contended by learned counsel for the appellant.

11. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

28.07.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO