



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

**RSA No. 2561 of 2023 (O&M)
Date of Decision: 13.01.2025**

Jagmeet Singh

..... Appellant

Versus

Resham Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Chetan Bansal, Advocate for
Mr. Rahul Bhargava, Advocate
for the appellant-plaintiff.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 09.05.2023 passed by the Court of District Judge, Amritsar (**hereinafter to be referred as “First Appellate Court”**), whereby first appeal of the appellant-plaintiff against the judgment and decree dated 16.08.2022 passed by the Court of Civil Judge (Junior Division), Baba Bakala Sahib (**hereinafter to be referred as “trial Court”**), partly decreeing the suit for permanent injunction, was dismissed.

[2] Briefly stating, the appellant-plaintiff filed a suit for permanent injunction restraining the defendants themselves or through their agents and attorneys from interfering into his peaceful possession over the suit property comprised in Khasra No.202, Khewat No.430, Khatauni No.885, as per jamabandi for the year 2016-17, situated in Village Tangra, Tehsil Baba Bakala Sahib, District Amritsar marked as ‘ABCD’ and shown in ‘Yellow’

colour in the site plan and for restraining the defendants from creating hindrance in the construction work being carried out by the appellant-plaintiff in his owned property marked as 'CDEF' and shown in 'Green' colour in the site plan and for possession of the land marked as 'BGHI' shown in 'Red' colour in the site plan which is part of Khasra No.202 owned by the appellant-plaintiff which had been illegally encroached upon by the respondents-defendants. In the plaint, it was pleaded that the appellant-plaintiff was co-owner of the suit property bearing Khasra No.202 in possession of land shown as 'ABCD' in the site plan being part of said Khasra number and the respondents-defendants had no concern over the same. It was further pleaded that when the appellant-plaintiff was raising construction in his own land, the respondents-defendants stopped hindrances in the construction work and on measurement of the property on the spot, it came to the notice of the plaintiff that respondents-defendants even had illegally encroached upon the part of the property of the appellant-plaintiff shown as red in the site plan. The appellant-plaintiff further pleaded that the respondents-defendants being influential persons were threatening the appellant-plaintiff that they would not allow him to raise construction in the property as shown in yellow colour in the site plan and also that they would dispossess the appellant-plaintiff from the property shown in green colour in the site plan; appellant-plaintiff also requested the respondent-defendants to handover the vacant physical possession of the property as shown in red colour in the site plan after removal of illegal construction, but they refused to do so. Hence, the suit.

[3] Upon notice, respondents-defendants appeared and filed a detailed written statement and denied all the material averments made in the plaint; thus, prayed for dismissal of the suit. In the written statement, it was pleaded that the appellant-plaintiff had wrongly claimed that the entire property shown in green, red and yellow colour in the site plan filed by him was part of Khasra No.202. It was then pleaded that property shown in red colour by the plaintiff was part of Khasra No.40//27/1 and the same shown in yellow was vacant plot being part of Khasra No.201 which was used by the defendants for ingress and egress to their houses and it was exclusively owned by respondents-defendants and they had constructed their residential houses as shown in green colour in the site plan attached by the defendants. It was further pleaded that the property shown in yellow by the plaintiff and in red colour by the defendants in their respective site plans was part of Khasra No.201 and the respondents-defendants as co-sharers with Ashok Kumar etc. were in its possession and thus, the appellant-plaintiff had no right, title or interest in Khasra No.201 as well as in Khasra No.47//27/1. It was also pleaded that the appellant-plaintiff was neither co-sharer nor in possession of the suit property and the same was also supported by Shajra Aks prepared by the revenue department and the appellant-plaintiff was only concerned with the property shown as green in his site plan and shown as blue in the site plan filed by the respondents-defendants, hence, the dismissal of suit was prayed for.

[4] The appellant-plaintiff filed replication, while re-iterating the averments made in the plaint. On the basis of pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
- 2. Whether plaintiff is entitled to relief of possession as prayed for? OPP*
- 3. Whether suit is not maintainable? OPD*
- 4. Whether the plaintiff have no locus-standi or cause of action to file the present suit? OPD*
- 5. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties? OPP*
- 6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 8. Whether the plaintiff has not come to the court with clean hands? OPD*
- 9. Relief. ”*

[5] After appreciating the evidence led by the respective parties, the trial Court partly decreed the suit, vide judgment and decree dated 16.08.2022. Aggrieved against the same, the present appellant filed the first appeal, which also came to be dismissed by the First Appellate Court, vide judgment and decree dated 09.05.2023. Hence, the present appeal.

[6] Impugning the aforesaid judgments and decrees passed by the Courts below, learned counsel for the appellant-plaintiff submits that the Courts below went wrong while holding that the appellant-plaintiff failed to prove his ownership and possession over the portions shown as red and yellow in the site plan without appreciating the oral as well as documentary evidence led by the appellant-plaintiff. He further submits that PW-1 (Balwinder Singh Patwari) never gave his report as Local Commissioner rather he gave a report while serving in the revenue department as Patwari,

who after visiting the spot, inspected the revenue record; made measurements and then recorded correct observations in the presence of both the parties and, therefore, the judgments and decrees passed by the Courts below were liable to be modified and the suit of the appellant was to be decreed in toto.

[7] I have heard learned counsel for the appellants and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the appellant-plaintiff. .

[8] In the present appeal, a perusal of record shows that report of PW1 Balwinder Singh, Circle Patwari, who demarcated the suit property and proved on record Shajra Aks Ex.P1; report of condition and construction at the spot as Ex.P2 and site plan as per revenue record Ex.P3 and site plan prepared by him Ex. P4 were without the orders of any competent Court, as also the report does not contain the signatures of the parties at the time of demarcation. Rather, application of the appellant-plaintiff for appointment of Local Commissioner was dismissed by the trial Court and the parties were asked to lead cogent and convincing evidence in support of their respective claims. The First Appellate Court rightly observed that PW1 Balwinder Singh, Circle Patwari was not trustworthy as firstly he prepared the demarcation report without any application from either of the parties and secondly the alleged demarcation was not prepared in the presence of the parties, which was essentially required.

[9] The plea of appellant-plaintiff that respondent-defendant / Resham Singh has encroached and illegally constructed over the portion shown as red colour in the site plan Ex.P5 in the year 2016, was not

established as no evidence in this regard was produced or proved on record. Thus, the appellant-plaintiff failed to prove his ownership and possession over the portions shown as red and yellow colour in the site plan Ex.P5.

[10] Accordingly, in view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of facts in the judgments and decrees passed by Courts below, the present appeal, being devoid of merits, is hereby **dismissed**.

[11] Pending miscellaneous application(s), if any, shall also stand disposed off.

January 13, 2025
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>