



RSA-5124-2010 (O&M)

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

**RSA-5124-2010 (O&M)
Date of decision : 09.01.2025**

Ramphal Master

..... Appellant

versus

Yashwant Singh Redhu & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Arihant Jain, Advocate and
Mr. Kanish Jindal, Advocate
for the appellant.

Mr. Jasbir Mor, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

1 Defendant is in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and the respondents as plaintiffs.

2 Plaintiffs filed suit seeking decree of permanent injunction in form of restrain against the defendant from interfering in peaceful and exclusive possession of plaintiffs over a constructed house as described in the head note of the plaint. It was claimed by the plaintiffs that suit property is part of gair mumkin plot bearing khasra No.166 Khatoni No.293 as per jamabandi for the year 2000-2001 of Village Dalamwala, Tehsil & District Jind. Father of the plaintiffs died on 24.09.1998. He was co-owner in possession to the extent of $\frac{1}{4}$ share.



Though the land is still joint and has not been partitioned, the father of the plaintiffs during his life time constructed boundary wall and house 30 years back. However the defendant is now adamant and is threatening to dispossess the plaintiffs.

3 The suit was contested by the defendant claiming that the plaintiffs have encroached upon 5 marlas of land of defendant on the western side of their house forcibly. It was claimed that defendant is owner in joint possession of khasra No.412 as per jamabandi for the year 2000-2001. Reliance was further placed on demarcation report dated 21.06.2003 to show that the plaintiffs have encroached upon 5 marlas of land. Defendant also filed counter claim seeking decree of mandatory injunction for removal of the said encroachment to the extent of 5 marlas.

4 Suit filed by the plaintiffs was put to trial by the Court of first instance framing following issues :-

“1- Whether the plaintiffs are owners in possession of the property marked as DCEFGHA as shown in Red and Sky colour in the site plan since last about 30 years after construction of wall and house, if so, to what effect? OPP

2- If Issue No. 1 is proved in affirmative, whether the plaintiffs are entitled for the relief claimed? OPP.

3- Whether the plaintiffs have encroached upon a part of Khasra No. 412 i.e., land measuring 5 Marlas by construction of wall about four years ago illegally, forcibly towards eastern side of plot of defendant? OPD.

4- If Issue No. 3 is proved, whether defendant is entitled for a decree of mandatory injunction by way of counter-claim? OPD.

5- Whether the suit of the plaintiff is not maintainable in the present form? OPD.



6- *Whether the plaintiffs have not filed proper affidavit along with the plaint, if so, to what effect? OPD.*

7- *Whether the plaintiffs have not come with clean hands in the court? OPD.*

8- *Relief.”*

5 While deciding issue Nos.1 & 2 Civil Judge held that the construction raised by plaintiffs over the land in dispute is not in dispute. Defendant in order to pursue his counter claim relied upon demarcation report Ex.D-5. However, it has been proved that the same was not carried as per Rules and Regulations. Three *pucca* points were not affixed to effect valid demarcation. Trial Court returned findings on issues No.1 & 2 in favour of the plaintiffs. Findings on issues No.3 & 4 were also answered against the defendant after demarcation report dated 21.06.2003 Ex.D-5 was held to be inadmissible for being not as per rules.

6 Court of first instance thus decreed the suit filed by the plaintiffs.

7 In first appeal filed by the defendant, the findings returned by the Court of the first instance stand affirmed. The Lower Appellate Court noticed that the defendant has relied upon the testimony of Inder Singh, Office Kunango and Demarcation report Ex.D-5. Inder Singh, Office Kunango, who appeared as DW-3 admitted in his cross examination that he could not conduct demarcation from 3 *pucca* points because of the construction of houses.

8 Learned counsel for the defendant while assailing the



findings recorded by the Courts below has drawn attention of this Court to the findings recorded by the Trial Court to submit that the plaintiffs failed to lead any evidence yet suit for permanent injunction filed by the plaintiffs stands decreed. He further submits that findings on issues No.3 & 4 as returned by the Court of first instance are also erroneous. It has been wrongly held by the Trial Judge that issues No.3 & 4 were not separately pressed or argued at the time of final arguments whereas whole of the evidence brought on record by the defendant was *qua* issues No.3 & 4.

9 *Per contra* learned counsel for the plaintiffs submits that so far as the possession of the plaintiffs over the suit property is concerned, the same is not in dispute. It has also come on record that the house was constructed 30 years back. It being suit for permanent injunction Courts below have rightly decreed the suit. He further submits that so far as demarcation report relied upon by counsel for the defendant is concerned, the same was proved not to be a cogent piece of evidence that too on the basis of admission made by the author thereof.

10 I have heard learned counsel for the parties and have gone through the records of the case.

11 Learned counsel for the defendant is not in a position to dispute that the present suit is merely a suit for permanent injunction wherein the plaintiffs who are co-owner in the suit property, seek to protect their possession. Defendant himself filed counter claim seeking decree of mandatory injunction admitting construction raised by the plaintiffs over the suit land. So far as demarcation report Ex.D-5 is



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concerned, both the Courts below concurrently found that the same having not been proved to be as per law cannot be relied upon as a cogent piece of evidence to decree the counter claim filed by the defendant.

12 Keeping in view that the plaintiffs are admittedly in possession after constructing their house, the Courts below have rightly decreed the suit filed by the plaintiffs and restrained defendant from interfering in the peaceful possession of the plaintiffs. So far as counter claim of the defendant is concerned, *qua* the alleged encroachment made by plaintiffs, needless to observe that the parties are co-sharers and thus in view of law laid down by Division Bench of this Court in “*Bachan Singh versus Swaran Singh*’, 2000(2) PLJ 143, the remedy with the defendants is to seek partition.

13 Appeal stands dismissed.

(PANKAJ JAIN)
JUDGE

09.01.2025

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No