

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

240

RSA-5871-2016 (O&M)

Date of decision: 08.01.2025

SUNIL

..Appellant

Versus

SUKHBIR SINGH & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Bhardwaj, Advocate
for the appellant.

Mr. Ankit Yadav, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. This regular second appeal has been filed by defendant No.4 to assail the correctness of First Appellate Court's judgment, which in turn has reversed the judgment and decree passed by the trial Court.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Jug Lal and another filed a suit for grant of decree of permanent injunction claiming that they along with other co-sharers are owners in possession of plot No.1073, situated within the 'abadi' of village Goyla Kalan, Tehsil Bhadurgarh. The defendants while contesting the suit claim that plaintiffs are owners of plot No.129, whereas, they are owners of plot No.128. During the pendency of the suit, a local commissioner was appointed, who submitted his demarcation report (Ex.P-2). It was found that a boundary wall has been constructed by the plaintiffs and they are using the property for tethering their cattles. However, the trial Court dismissed the



suit. The First Appellate Court upon re-appreciation of evidence, reversed the judgment of the trial Court.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with documents produced by learned counsel for the parties.

5. Learned counsel for the appellant while relying upon a note recorded with red pen in the jamabandi for the year 2011-2012, submits that appellant's father Sh. Umra Singh was recorded as owner to the extent of 1/3rd share. He submits that the First Appellate Court has ignored that fact.

6. Per contra, learned counsel representing the respondents has produced a copy of demarcation report (Ex.P-2) to contend that plaintiffs possession is proved.

7. It may be noted here that the present suit is only for grant of injunction. After examination of the pleadings, the trial Court framed the following issues:-

"1. Whether the plaintiff is entitled for the decree of permanent injunction against the defendants by restraining of their assignees or their agents permanently from breaking the boundary wall and interfering in the peaceful possession and ownership of the plaintiffs over the disputed plot bearing No.1073 as mentioned in para no.2 of the plaint? OPP

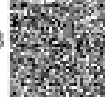
2. Whether the plaintiff is entitled for the decree of mandatory injunction if during the pendency of the suit, the defendants succeeded in breaking the boundary wall or dispossessing the plaintiffs from the suit land? OPP

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

4. Whether the suit of the plaintiff is bad for misjoinder and nonjoinder of necessary parties? OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Relief."



8. Thus, it is evident that there was no issue with regard to ownership of the property.

9. The plaintiffs in order to prove their case have produced jamabandi for the year 2001-2002, which shows that they are owners in possession of agricultural land as well as property in '*abadi*' of the village.

10. Per contra, the defendants have produced a copy of jamabandi for the year 2011-2012, which is with respect to a property recorded as '*shamlat Pana Amarsan*'. From perusal of the jamabandi, it is evident that defendants are not recorded to be in possession of the property. The note with red pen only shows that Sh. Umra Singh was entitled to 1/3rd share, however, that note does not prove the defendant's possession. Moreover, the First Appellate Court has relied the report of local commissioner, which proves that the property is in possession of the plaintiffs as they have constructed a boundary wall.

11. Keeping in view the aforesaid facts, no ground to interfere in the findings of fact arrived at by the First Appellate Court is made out.

12. Dismissed accordingly.

13. All the pending miscellaneous applications, if any, are also disposed of.

January 08th, 2025

Ay

(ANIL KSHETARPAL)
JUDGE

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