

RSA-4949-2015 (O&M)

2025 PHHC 152360



220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4949-2015 (O&M)
Date of decision : 04.11.2025

Nirmal Singh Appellant

Versus

Darbara Singh & ors. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Jasmail Singh Brar, Advocate
for the appellant.

Mr. A.K.Khunger, Advocate
for respondents No.1 & 2.

None for other respondents.

PANKAJ JAIN, J. (ORAL)

1 Appellant-Plaintiff is in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as plaintiff and the respondents as defendants.

2 Plaintiff is in second appeal aggrieved of the judgment and decree passed by the Courts below.

3 Plaintiff filed suit seeking decree of declaration to the effect that he is owner in possession of land measuring 57 kanals being 1140/5822 share out of total land measuring 291 kanals 2 marlas on the basis of family settlement dated 30.12.1998. Plaintiff claimed that the family settlement was arrived at between plaintiff as well as father of



defendants No.1 and 2 and the possession was exchanged. Both the parties were put in possession of their respective shares.

4 Suit was contested by defendants. Defendant No.1 denied family settlement between the parties. It was denied that any writing dated 30.12.1998 was executed between Nirmal Singh and Jagir Singh. Defendant No.2 also denied the claim of the plaintiff. Defendant No.4 filed written statement admitting the claim of the plaintiff.

5 The Court of the First Instance framed following issues :-

- “1. Whether the plaintiff is entitled for declaration, as prayed for ? OPP*
- 2. Whether plaintiff is entitled for possession ? OPP*
- 3. In case, his possession is not proved, whether plaintiff is entitled for permanent injunction? OPP*
- 4. Whether suit of plaintiff not maintainable? OPD*
- 5. Whether plaintiff has no locus standi to file the present suit? OPD*
- 6. Whether plaintiff has no cause of action to file the present suit? OPD*
- 7. Whether suit of the plaintiff is bad for want of proper court fee? OPD*
- 8. Whether plaintiff has concealed the material and true facts, if so its effect? OPD*
- 9. Whether suit of plaintiff is barred by principle of resjudicata? OPD*
- 10. Whether suit of plaintiff is within limitation? OPD*
- 11. Relief.”*

6 The Courts below have discarded writing Ex.P2 dated 30.12.1998 holding that the same does not talk of any family settlement as



claimed by the plaintiff vide Ex. P1 dated 07.07.1997. The rights being created in present act, the document Ex.P2 was required to be compulsorily registered. While answering issue No.3 the Trial Court observed as under :-

“21. Learned counsel for the plaintiff has submitted for the sake of arguments, if it is assumed that he has not been able to prove his ownership right in the suit property, even though, he has been able to prove his possession over the suit property and to prove so, he himself has stepped into the witness box and has also proved on file copy of jamabandi for the year 1999-2000 Ex.P11 and copy of Khasra Girdawari from Sauni 2004 to Harri-2005 Ex.P12, wherein the suit property has been shown to be in possession of Nirmal Singh plaintiff.

Whereas, in reply to it, learned counsel for the defendants has drawn attention of the court towards jamabandi Ex P11 wherein Rect. Nos. 21 Killa nos. 7/2(4-0); Rect. Nos.66 Killa Nos. 2/2(0-3); Khasra nos. 242/1(2-0),304(0-4)305(0-4) have been shown to be in possession of "MAKBUJA MALKAN who are Zora Singh; Nirmal Singh; Jagir Singh and Balvir Singh.

22. Similarly, Khasra numbers 26//14/2/1(0-11); 46//22/1(5-19),22/2(2-1):23/1/1(2-19);23/1/2(1-1); 55//2(9-3).9(8-0),10/1(3-0),12(8-0),11/2(5-4),20/1(3-9), 20/2(3-4).22/1(0-7):77//5/1/1/1(0-11),5/1/1/2(0-18) is shown to be in possession of Zora Singh, Khasra nos. 26//24(8-0), 25(8-0) has been shown to be in possession of Bharpur Singh son of Zora Singh; Khasra nos. 38//6(8-0),6(8-0),15(8-0) has been shown to be in possession of Nazam Singh son of Zora Singh, Khasra nos. 64//21/1(4-0).22(8-0):63//25/2/2(2-0);77//4(8-0) in cultivating possession of Badal Singh son of Zora Singh; Khasra nos. 88//6/1(4-0),15/2(4-0) are shown to have been disposed of by Zora Singh to Budh Singh, Dalip Singh, Angrej Singh, Sahib Singh sons of Gajjan Singh son of Godha Singh. Besides it, Khasra nos. 9//1/1(7-7),10(8-8),11/1(6-4) are shown to have been in possession of Balwinder Singh: Jagjit Singh, Jugraj Singh sons of



Dalip Singh son of Gajjan Singh, and Khasra Nos.45//10(5- 6), 12/2(4-1) are in possession of Harbans Singh and Dilbagh Singh sons of Baldev Singh son of Wazir Singh, and Khasra Nos.45//11(7-13) is in possession of Nazar Singh, Jasvir Singh, Jalour Singh, Wakil Singh sons of Nachhattar Singh and Khasra nos. 8/248-0),21/4(8-0),7/1(4-0) is in possession of Sukhcharan Kaur wife of Nirmal Singh. The plaintiff is not proved to be in possession of the suit property. So, he claims that he is entitled to injunction restraining the defendants from interfering in his peaceful possession. It means, he has taken a wrong plea that the defendants are about to dispossess him illegally and forcibly, when his possession is not proved on the file.

23. After hearing both the learned counsel for the parties on this aspect and going through the revenue record i.e. jamabandi and khasra girdawari. I have come to conclusion that except Khasra Nos. 27//21(8-0),22/1(4-16),22/2(3-4).23(8-2),45//12/1(5-1),18/2(4-0),19/1/1(2-8),19/2(2-4),23/2/1(3-18);46//9/3 (3-6), 10/2(6-4), 11(8-0), 12/1(2-16), 20(9-0);77/7(8-0), 14(8-0),18/2(6-0), 23(8-0), Nirmal Singh is not proved to be in possession of any other khasra numbers and the same have been in possession of the persons whose names are mentioned above in the above said para. So, when he is not in possession of Khasra numbers, except khasra nos. 27//2(8-0),22/1(4-16),22/2(3-4),23(8-2);45//12/1(5-1)18/2(4-0),19/1/1(2-8),19/2 (2 - 4),23/2/1(3-18);46//9/3(3-6),10/2(6-4), 11(8-0), 12/1(2-16),20(9-0):77//7(8-0),14(8-0):18/2(6-0).23(8-0), it does not lie in his mouth to say that the defendants are trying to interfere in those khasra numbers. Otherwise also, in his evidence, he has not said if the defendants have come to dispossess him from any part of the suit property, except alleged in para no.4 of the plaint that defendants no.1 and 2 are threatening to dispossess him, but no specified as to when threat was made. Even in his statement recorded in the court, he has not said so. It means the plaintiff has got no cause of action to seek injunction restraining qua alienation is concerned, the plaintiff has failed to prove if he has any right. title or interest in the



suit property. Therefore, he is not entitled to get this relief. As such, this issue is also decided against the defendants.”

7 Counsel for the appellant has drawn attention of this Court to the impugned judgment to submit that no finding has been recorded *qua* possession of the plaintiff over the suit property. He submits that, in view of the fact that Section 118 of the Transfer of Property Act, 1882 is not applicable to the State of Punjab, even an oral exchange is permissible. Once it has come on record that both the parties were put in possession of their respective parcels of land after exchange, the Courts below ought not have dismissed the suit filed by the plaintiff.

8 Having perused the records of the case, this Court finds that the Lower Appellate Court was required to record findings in appeal in terms of Order XLI Rule 31 CPC. Bare perusal of the judgment dated 14.05.2015 passed by the Lower Appellate Court would reveal that no finding has been recorded with respect to possession.

9 Mr. A.K.Khunger, Advocate for respondents No.1 & 2 is not in a position to dispute the aforesaid factual situation discernible from the record.

10 In view thereof, this Court finds that the judgment and decree passed by the Lower Appellate Court cannot be sustained and needs to be reversed.

11 The appeal is accordingly allowed. The judgment and decree passed by the Lower Appellate Court is hereby set aside. The matter is



remanded back to the Lower Appellate Court to decide the same afresh in accordance with law.

12 The parties shall appear before the Lower Appellate Court on 01.12.2025. The Lower Appellate Court shall make an endeavor to decide the appeal preferably before 31.05.2026.

13 Pending miscellaneous application, if any, also stands disposed off.

04.11.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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