

223

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

2025.PHHC:111074



Reserved on: 07.08.2025

Date of pronouncement: 22.08.2025

RSA-682-2016 (O&M)

JASWANT SINGH

... APPELLANT

VERSUS

DEV SINGH AND OTHERS

... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE PARMOD GOYAL

Present:- Mr. Arun K. Bakshi, Advocate for the appellant.

Mr. Parminder Singh Sekhon, Advocate and

Mr. Rajdeep Singh Gill, Advocate for respondent Nos.1 and 2.

PARMOD GOYAL, J.

The unsuccessful plaintiff-appellant whose suit for permanent injunction was dismissed with costs vide impugned judgment and decree dated 28.04.2015 passed by Civil Judge (Junior Division) Barnala and vide judgement and decree dated 04.11.2015 passed by District Judge, Barnala has preferred present appeal. Both the Courts have concurrently given findings of fact against plaintiff-appellant.

2. Simple claim of plaintiff as asserted in plaint, was that suit land measuring 13 kanal 12 marla bearing khatauni no.716/638 khasra no. 2859(13-12) situated within revenue estate of village Sehjara Tehsil Barnala is owned by defendant no.3-Society and land was allotted by defendant no.3 to Gurdev Singh for cultivation. During his lifetime Gurdev Singh

remained in possession of suit land being member of defendant no.3-Society. He had nominated plaintiff as his nominee. Gurdev Singh died on 15.05.2006, unmarried and issue-less. Plaintiff asserted that after death of Gurdev Singh, plaintiff had stepped into the shoes of Gurdev Singh and is in continuous possession of the suit land. He claimed that defendant nos.1 and 2 have no right over the suit land and are bent upon to interfere in peaceful possession of plaintiff and wants to take forcible possession.

3. Defendants on the other side took number of preliminary objections regarding estoppel, maintainability, locus standi plaintiff not having approached Court with clean hands, plaintiff having concealed the facts, however, and on merits, allotment of land in favour of Gurdev Singh by Society was admitted. It was, however, asserted that plaintiff was never appointed as his nominee by Gurdev Singh. That plaintiff got himself incorporated as nominee in connivance with officials of defendant-society. It was asserted that Gurdev Singh was real brother of plaintiff and defendant no.1. He was unmarried. Both plaintiff and defendant no.1 had served him. He stayed with them and he had given suit land to both of them in equal share in family settlement for the purposes of cultivation and since that day plaintiff and defendant are in cultivating possession of the suit land. It was asserted that last rites of Gurdev Singh were also performed by both of them. Dismissal of suit was prayed for.

4. Following issues were framed by learned Court of First Instance:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 2. Whether plaintiff has no locus standi and cause of action to file the present suit? OPP*

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

4. Whether the plaintiff is estopped by his own act and conduct? OPD

5. Whether the plaintiff has not come to the Court with clean hands?OPD

6. Relief.

5. After considering evidence and respective contentions of parties, issue no.1 was decided against plaintiff. Issue no. 2 to 5 were decided against defendants and suit as well as appeal preferred by plaintiff were dismissed with costs.

6. Facts in present case are not in dispute. Suit land is owned by defendant no.3-society who was given up as no relief was sought against it. It is also admitted by both sides that suit land was given to brother of plaintiff and defendant no.1 Gurdev Singh for cultivation, being member of society. The simple question therefore, would be as to who is entitled to possessory/cultivating rights vested in Gurdev Singh after his death.

7. On one hand, plaintiff has claimed himself to be nominee appointed by Gurdev Singh with defendant-Society and claimed entire land on the basis of nomination in his favour. On the other hand, the case of defendant no.1 is that Gurdev Singh was living with both the brothers. All 3 brother had cordial relationship. Gurdev Singh during his lifetime by way of family settlement had divided the suit land for the purposes of cultivation amongst plaintiff and defendant no.1.

8. In order to prove that plaintiff was appointed nominee, plaintiff has duly examined PW3 Charanjit Singh, Registry Clerk O/o Assistant Registrar, Barnala. He had duly proved that Gurdev Singh was member of society and Jaswant Singh plaintiff was appointed as his nominee. In the present case, as far as nomination is concerned, plaintiff has succeeded in

proving himself to be nominee of Gurdev Singh from the records from society.

9. Faced with this, learned counsel for the respondent argued that mere nomination in favour of plaintiff would not give rise to any right in favour of plaintiff as the succession of Gurdev Singh shall open upon his death and duty of nominee is to ensure that benefits of estate of Gurdev Singh passes on to successors of Gurdev Singh. He argued that plaintiff and defendant no.1 are real brothers of Gurdev Singh and Gurdev Singh was unmarried and had no other legal heirs except for plaintiff and defendant no.1 and since Gurdev Singh during his lifetime by way of partition had divided the suit land equally amongst plaintiff and defendant no.1, therefore, upon death of Gurdev Singh natural succession would open and both plaintiff and defendant no.1 would be entitled to equal share and plaintiff is not entitled to entire share of Gurdev Singh only on the basis of nomination.

10. On consideration, I find merit in the arguments raised on behalf of respondents-defendants. Role of nominee is limited and by nomination one does not become entitled to estate of deceased. Role/duty of nominee is to ensure that estate is handed over to rightful heir. Nominee acts as a custodian and not necessarily the owner. Therefore, merely because plaintiff was nominated as nominee by Gurdev Singh, he does not acquire exclusive right over the estate of Gurdev Singh in exclusion of other legal heirs. He has to act as cutodian and has to ensure that estate of Gurdev Singh is passed on to legal heirs. Therefore, on the basis of nomination, plaintiff is not entitled to entire suit land which was under cultivation of Gurdev Singh. Perusal of evidence of PW1 and PW2 as well as that of defendant no.2 who

had appeared as DW1, it is clear that plaintiff is not in exclusive possession of suit land. PW2 Sikander Singh son of plaintiff admitted in his cross-examination that defendant Dev Singh is in possession of maximum part of suit land. Similarly, defendant no.2 son of defendant no.2 while appearing as DW1 claimed that he and his father are in possession of 2/3rd share and 1/3rd share is in possession of plaintiff. The admission by both the sets of witnesses regarding possession of plaintiff as well as defendant no.1 in fact corroborates assertions of defendant no.1 that Gurdev Singh during his lifetime had divided the suit land in equal share among both the brothers by way of family settlement. It is, therefore, clearly made out that Gurdev Singh had two LRs i.e. plaintiff and defendant no.1 and during his lifetime he had divided the suit land equally amongst his brothers who were only LRs of Gurdev Singh. The claim of DW1 that he along with his father is in possession of 2/3rd share cannot be accepted in view of assertions by defendant no.1 in his written statement that property was divided equally by Gurdev Singh by way of family settlement. Defendant no.1 is estopped by admissions made in his written statement.

11. In view of above facts which are also clearly noticed by both the Courts below, both the Courts have erred in dismissing suit of plaintiff in totality. Plaintiff has laid claim over entire suit property which was under cultivation of Gurdev Singh. However, by way of admission as well as from evidence, it is clearly made out that plaintiff had succeeded 50% rights in the suit property along with his brother - defendant no.1 has also succeeded remaining 50% of suit property. Once plaintiff has succeeded in proving his right as well as possession of 50%, plaintiff is entitled to permanent

injunction in his favour, as prayed by him. The findings of learned Courts below on issue no.1 is accordingly, modified. It is held that plaintiff is entitled to 50% of suit property having succeeded his brother Gurdev Singh to that extent. Plaintiff is, accordingly, entitled to decree of permanent injunction qua 50% suit land. The judgements and decrees passed by learned Courts below are accordingly modified. Suit of plaintiff is partly decreed. It is held that plaintiff is entitled to cultivate 50% of suit land having succeeded same from Gurdev Singh and defendants are restrained to interfere in peaceful possession of plaintiff qua 50% of land. Remaining 50% of land has been inherited by defendant no.1. Appeal is partly allowed to the above extent.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

22.08.2025

Janki

**(PARMOD GOYAL)
JUDGE**

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