

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****106****RSA-1100-2018 (O&M)
Date of decision: 27.02.2025****Mohinder Singh****...Appellant(s)****Vs.****Dhana Singh and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. M.S.Dhami, Advocate for the appellant.***********NIDHI GUPTA, J.**

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiff seeking declaration to the effect that the suit property is impartible and in-alienable vesting in the land owners including the plaintiff; and therefore, the alleged sale of part of suit property measuring 0K-9M by the defendant No. 1 in favour of defendant No.2 is illegal, null and void; along with consequential relief of permanent injunction to restrain the defendants from encroaching upon the property in question and raising any construction thereon, has been dismissed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.



3. The present suit has been filed by the plaintiff against the defendants for seeking the relief of declaration to the effect that the suit property measuring 1K-03Mls, bearing khata No.150/158, khasra No.93 Ghair Mumkin Chah Ghair Zari, is im-partiable, in-alienable vesting in the land owners including the plaintiff, as entered in the jamabandi for the year 1993-94, situated in the area of village Julah Majra, HB No.286, Tehsil and District SBS Nagar; **and** the alleged sale of part of the property in question measuring 0K-09Mls by the defendant No.1 in favour of the defendant No.2 is illegal, null and void, abinitio and the same is liable to be set aside; along with consequential relief of permanent injunction to restrain the defendants from encroaching upon the property in question and raising any construction thereon and thereby changing its nature and identity and from alienating the same further illegally and forcibly.

4. The brief facts as put forth in the plaint are that the plaintiff is one of the co-owners and in possession of the property measuring 1K-03Mls., the detail of which is mentioned above. The property in question is Ghair Mumkin Chah Ghair Zari and it has been kept reserved and is being used for common purposes of the land owners/ co-owners by encroaching upon it, raising constructions over the same and thereby to change its nature and identity. It is impartiable, in-alienable and nobody can change its user to any purpose than for which it has been kept and reserved. Earlier the defendant No.1 and others threatened to encroach upon the property in question and to raise construction over the same and thereby to put the same to their exclusive use to the exclusion of the plaintiff as well as the



other co-owners and consequently the plaintiff filed a suit for permanent injunction against defendant No.1 and others bearing Civil Suit No.314 of 1996, titled as '*Mohinder Singh versus Dhanna Singh and others*' and the same was decreed on 25.09.1999 by the Court of Civil Judge (JD), Nawanshahr whereby the defendant No.1 and other defendants of that suit were restrained from encroaching upon and raising any type of construction over the property in question illegally and forcibly, holding the property in question to be Ghair Mumkin Chah Ghair Zari. Similarly Charni and others also threatened to encroach upon the property in question and to raise construction over the property in question and consequently the plaintiff filed a suit for permanent injunction bearing title "*Mohinder Singh versus Charni etc.*" and the suit was decreed on 10.12.1996 by the Court of Civil Judge (JD), Nawanshahr and thus the property in question is Ghair Mumkin Chah Ghair Zari and the same is in-alienable and impartiable and can not be put to use for any other purpose than for what it has been kept reserved. That recently the defendant No.2 has started alleging sale of part of the property in question measuring 0K-09Mls from the defendant No.1 and on the strength of alleged sale, the defendant No.2 has started threatening to encroach upon the property in question and to raise construction over the same and also wants to convert the same to his exclusive use and further wants to sell or transfer the same illegally and forcibly. As the property in question is Ghair Mumkin Chah Ghair Zari, the same is in-alienable and impartiable and no one has right to put the same to his exclusive use. The plaintiff has asked the defendants to admit his claim and to declare that the



property in question is Ghair Mumkin Chah Ghair Zari and impartiable and in-alienable and that the alleged sale of part of property in question by defendant No.1 in favour of the defendant No.2 is illegal, null and void and the same is liable to be set aside and further asked them to refrain from in any manner encroaching upon the same and to raise construction over the same, but they have refused to admit the claim of the plaintiff for the last two days and thus cause of action has arisen to the plaintiff to file the present suit. Hence the present suit.

5. Upon notice, the defendant appeared and filed written statement resisting the suit by *inter alia* stating that the defendant No.2 is owner of land measuring 0K-9M bearing khasra No. 93//2 which has been purchased by defendant No.2 from defendant No.1 vide sale deed dated 08.09.2008. The ownership of defendant No.1 is reflected in the jamabandi for the year 2003-04. It was further pleaded by the defendants that defendant No.1 has never threatened the plaintiff as the plaintiff has got no concern with the property in question. The judgments produced by the plaintiff do not hold the ownership of the plaintiff over the property in question. In the said judgments, no restraint order has been passed regarding alienating the property in question against the defendant No.1. The defendant No.1 being lawful owner of the property in question, executed the legal and valid sale deed in favour of the defendant No.2 on 08.09.2008 on the basis of which defendant No.2 has become the owner of the above said land. The mutation to this effect has already been sanctioned and the defendant No.2 has got full right to use the property in



question as per his own choice. The plaintiff has also challenged the mutation order before the Collector. Denying the other averments, prayer was made for dismissal of the suit.

6. No replication was filed by the plaintiff.
7. From pleadings of the parties, following issues were framed: -
 1. Whether the plaintiff is entitled to the declaration as prayed for?OPP
 2. Whether the plaintiff is entitled to the permanent injunction as prayed for?OPP
 3. Whether the suit is not maintainable?OPD
 4. Whether the plaintiff has got no cause of action against the replying defendants?OPD
 5. Whether the plaintiff is barred by his own act and conduct to file the present suit?OPD
 6. Whether the plaintiff has not come to the court with clean hands, if so its effect?OPD
 7. Whether the plaintiff is estopped by his act and conduct to file the present suit?OPD
 8. Relief.
8. On the basis of the evidence adduced by the parties, the learned trial Court decided issue No.1 against the plaintiff and in favour of defendants. Issue No. 2 was partly decided in favour of the plaintiff and against the defendants by holding that the property in question is measuring 1K-13Mls and the plaintiff has mentioned this khasra number on the basis of jamabandi for the year 1993-94, but the defendant has produced jamabandi for the year 2003-04 whereby khasra No.93/2 has been separated measuring the land 0K-09Mls and perusal of Ex.DW1/B



shows that the said number has been bifurcated into two khasra numbers i.e. khasra No.93/1 and 93/2 and thus the defendants have no right to interfere upon this very khasra No.93/1 whereas the plaintiff is not entitled for the relief of permanent injunction regarding khasra No.93/2. Issue No. 3 was decided against the defendants and in favour of the plaintiff; issues No. 4 and 5 were decided against the defendants and in favour of the plaintiff; issues No. 6 and 7 were disposed of being not pressed; and therefore, vide judgment and decree dated 17.11.2015, the suit of the plaintiff was partly decreed with costs holding that the plaintiff is not entitled for the relief of declaration as prayed for and further that the plaintiff is not entitled for the relief of permanent injunction regarding khasra No.93/2 whereas the defendants are restrained from interfering into the property by way of encroaching, raising constructions and to change its nature which falls within khasra No.93/1.

9. The appeal filed by the plaintiff was also dismissed with costs by the learned Additional District Judge, Shaheed Bhagat Singh Nagar vide judgment and decree dated 1.8.2017 thereby affirming the findings of the learned trial Court. Hence, the present second appeal.

10. Learned counsel for the plaintiff *inter alia* argues that the suit property is im-partiable and in-alienable. It is submitted that consolidation proceedings had taken place and as per the orders passed in the said proceedings OK-9 M of the suit property was allotted to the defendants. It is submitted that the Id. trial court while recording the findings on issues No. 1 & 2 and denying the entire relief sought by the appellant has relied upon



only order dated 15.11.1994 passed by the Id. Consolidation Officer and the mutation sanctioned on the basis of said order dated 15.11.1994 as claimed by the defendants. But the said order dated 15.11.1994 has not been produced at all on record. The Respondent No. 1/ defendant No. 1 has claimed the exclusive ownership over khasra No. 93/02 (0K-09MIs), as the khasra No. 93 (1K-03MIs) has been bifurcated into khasra No. 93/1 (0K-14MIs) and khasra No. 93/02 (0K-09MIs) and further on the basis of said order dated 15.11.1994 the mutation has been sanctioned. It is the settled law of land that the entries in the revenue record (i.e. mutation etc.) do not confer the title of land, and the said revenue entries are mere for record purpose. The title of land depends upon the conveyance deed, i.e. sale deed, title document etc. Even the defendant witness DW-1 Gurpreet Singh, concerned Patwari of the village has not produced the record of Farad Jamabandi 1993-94 pertaining to the khasra No. 93, and copy of said order dated 15.11.1994. The said DW-1 has deposed in his cross-examination that, up to date he has not seen the order dated 15.11.1994, he has not seen name of Dhanna Singh (defendant No.1) in the column No. 4 (detail of owner), in column No. 5 (name of cultivator) in the register patwar. But in the columns No. 4 & 5 the name has been written as Makbuja Malkan. The said DW-1 has also deposed that Khasra No. 93 has been shown in the revenue record as measuring 1K-03MIs and recorded as Gair Mumkin chah, Gair Zari Ek Morta Rah Wala Bela. Thus the findings of both the courts below on issues No. 1 & 2 that the defendant No. 1 is exclusive owner of khasra No. 93/2 (0K-09MIs) are perverse, illegal and based on insufficient



evidence on record, hence liable to be set aside. Once there is no sufficient/cogent evidence on record for bifurcation of khasra No. 93 (1K-03MIs) as khasra No. 93/1 (OK-14MIs) and khasra No. 93/02 (OK-09MIs), which is alleged by the defendants, then the defendant No. 1 cannot be held to be exclusive owner in possession of khasra No. 93/02 (OK-09MIs), therefore the sale deed dated 08.09.2008 executed by defendant No. 1 in favour of defendant No. 2, and further sanctioning of mutation etc. all are illegal and not sustainable in the eyes of law. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned courts below be set aside.

11. No other argument is raised on behalf of the appellant/plaintiff.

12. I have heard learned counsel for the appellant/plaintiff and perused the case file in minute detail.

13. I find no merit in the submissions made on behalf of the plaintiff as the learned courts below have correctly held that the plaintiff was not entitled to the declaration as prayed for and not entitled for permanent injunction regarding khasra No. 93/2 as the plaintiff has failed to prove that land measuring 1K-3M pertaining to khasra No. 93 is Gair Mumkin Chah Ghair Zari; and in such circumstances, sale deed (Ex.D1) cannot said to be illegal. Moreover, property in question is measuring 1K-3M and plaintiff has mentioned khasra No.93 on the basis of jamabandi for the year 1993-94 (Ex.P1); whereas the defendants had produced jamabandi for the year 2003-04 as per which khasra No. 93/2 stood separated from



khasra No. 93 in respect of land measuring OK-9M. This fact is evident from Ex.DW1/B which is the copy of Tartima Naksha, as per which said khasra No. 93 has been bifurcated into two khasra nos. i.e. 93/1 (OK-14M) and khasra No. 93/2 (OK-9M). Therefore, the defendants had no right to interfere upon khasra No. 93/1; whereas plaintiff is not entitled for relief of permanent injunction in respect of khasra No. 93/2. The record makes it clear that as per the order dated 15.11.1994 passed by the Consolidation Officer, Jalandhar and tatrma Naksha (Ex.DW1B), khasra No. 93 was bifurcated into two parts i.e. khasra No. 93/1 and khasra No. 93/2. The plaintiff further failed to challenge khasra No.93/2 in respect of the land measuring OK-9M out of khasra No. 93 which was allotted to defendant No.1. Thus, the said judgment dated 15.11.1994 attained finality, as the plaintiff failed to challenge the same. Moreover, Defendant No.1 had sold the said land measuring OK-9M of khasra No. 93/2 vide registered sale deed 8.9.2008 (Ex.D1) in favour of defendant No.2. The registered sale deed has been attested by Sub-Registrar, Nawanshahr in the presence of attesting witnesses; pursuant to which mutation has been sanctioned in favour of defendant No.2. The plaintiff has not led any evidence to prove that the said sale deed (Ex.D1) was a result of fraud; or that defendant No. 1 was not the owner of the property sold by him. As such, I find, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below.



14. The relevant findings in this regard are contained in para 11 of the judgment and decree dated 01.08.2017 of the learned lower appellate Court which are as under:-

“11 Perusal of the revenue record Ex.DW1/A placed on record shows that the appeal No.177/94 dated 14.09.1994 was filed before the Consolidation Officer and vide his order dated 15.11.1994, 9 marlas comprised in Khasra No.93/2(0-9) was allotted to Dhanna Singh. Mutation No. 1849 was entered to this effect and it was attested by AC-IIInd Grade on 24.04.1995, which proves that ownership of 9 marlas in khasra No. 93/2 (0-9) was changed in the name of Dhanna Singh and it is pertinent to note here that none of the co-sharers of land comprised in Khasra No.93/1/especially Mohinder Singh raised any objection. A site plan drawn on the mutation register Ex.DW1/B clearly shows that Khasra No.93 was divided into two parts i.e. 93/1(0-14) and 93/2(0-9). It is a settled principle of law that presumption of truth is attached to the revenue record until the contrary is proved by the person, who challenges the same. However, in the instant case, no such evidence has been brought on record by the plaintiff to prove that order dated 15.11.1994 was not passed by the Consolidation Officer or that the mutation No.1894 was result of fraud and misrepresentation. Mohinder Singh has even failed to challenge the bifurcation of khasra No.93 into two parts. It can not be believed that he was not aware of this bifurcation because in the previous suit No.314 of 1996-titled as Mohinder Singh Vs. Dhanna Singh and others which was decided on 25.09.1999 by Ld. Civil Judge (Jr.Divn.), Nawanshahr it was specifically pleaded by Dhanna Singh that the consolidation officer had bifurcated khasra No.93 into Khasra No.93/1 and Khasra No.93/2 and he was given the possession

of 9 marlas in Khasra No.93/2. The Ld. Trial Court in that case had observed that vide order dated 15.11.1994, the land measuring 9 marlas out of Khasra No.93 was allotted to Dhanna Singh. The said judgment has reached the finality because Mohinder Singh has not challenged the same and he can not now agitate the issue that order dated 15.11.1994 was never passed by the consolidation officer.”

15. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.
16. Hence, the present regular second appeal is hereby **dismissed.**
17. Pending applications, if any, stand disposed of.

27.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No