



RSA-357-2017 (O&M)

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

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Date of decision: 09.01.2025

Ram Chander

... Appellant

Vs.

Sube Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. J.S. Cooner, Advocate for the appellant.

Mr. Vijay Singh Kajla, Advocate
for respondents No. 1 to 10.

SUVIR SEHGAL J.

1. Assailing the concurrent finding recorded by the two courts, appellant-plaintiff is before this Court by way of instant second appeal.

2. Claiming to be owner in exclusive possession of a residential plot measuring 450 square yards, plaintiff filed a suit for declaration to the effect that he is owner in possession and for permanent injunction restraining the defendants from interfering in his

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peaceful possession and from alienating the suit property. Pledged case of the plaintiff is that Sh. Karmu @ Karma, predecessor-in-interest of defendants No.1 to 10, was the owner in possession of 1/4th share in Khasra No. 246//23/2 in Khewat No.2900//2797 Khatauni No.3327 of Gair Mumkin land measuring 2 kanals 6 Marlas. He sold 1/4th share in the land measuring 400 square yards to the plaintiff @ Rs.35 per square yard in the year 1985 for a total consideration of Rs.14,000/-. Plaintiff claims that he purchased another 50 square yards for a consideration of Rs.5,000/- which was paid in the presence of witnesses. Plaintiff made construction on the plot and is utilizing the same. However, Karmu never executed sale deed in his favour and after his death, defendants No.1 to 10 have started interfering in his possession on the pretext that they have inherited the suit land.

3. Upon notice, suit has been contested by defendants No. 1 to 13 by filing a reply. Besides raising various preliminary submissions it was stated that defendants No.1 to 10 were the owners of the suit property and after death of their father, they had inherited it along with their mother. Reference was made to the Jamabandi for the year 1999-2000 to show that the suit was originally owned by Chandan Singh, Dharma, Karmu and Smt. Banti in equal share and after the death of Karmu, his widow and children became the owners. A mutation No.1886 dated 20.11.2004 was sanctioned. On death of

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Smt. Banti, mother of defendants No.11 and 12, her $\frac{1}{4}$ share also devolved on her legal heirs. A General Power of Attorney dated 23.04.2008 was executed by the heirs of Smt. Banti, in favour of Jagbir Singh son of Karmu, defendant No.3, who entered into an agreement for sale dated 20.05.2008 of 544 square yards of land with Rajbir Singh defendant No.14, for a consideration of Rs.1000/- per square yards. The proposed vendee paid an amount of Rs.1 Lac as earnest money and vacant possession of the land was handed over to him in part performance of the contract. Rajbir Singh, raised boundary walls and installed a gate on the land alienated to him. The construction was demolished by the plaintiff and he encroached upon the land. Sale deed in favour of the plaintiff was denied and it was averred that Karmu was the owner of 347.90 square yard and could not have effected the sale of 450 square yards as alleged by the plaintiff. In their counter claim, defendants prayed for passing of a decree of permanent injunction restraining the plaintiff from interfering in the possession of Rajbir Singh. Defendant No.14 filed a separate written statement taking the same stand. During pendency of the trial, a statement was made by counsel for the plaintiff and suit was dismissed as withdrawn qua the plaintiff on 01.05.2005 and the counter claim was ordered to be treated as a separate suit for the purposes of adjudication. Plaintiff filed a

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replication controverting the averments of the written statement. On the basis of the pleadings of the parties, trial Court framed the following issue:-

- (i) Whether defendants No. 1 to 13 and now defendant No.14 are the owner in possession of the suit property, as alleged? OPD.
- (ii) If the above issue is proved in affirmative, whether the defendants are entitled for relief of permanent injunction restraining plaintiff from interfering in the possession of defendant No.14 over the suit property in any manner as alleged? OPD.
- (iii) Whether defendant No.14 is entitled for the relief of mandatory injunction directing the plaintiff to restore the suit property in its original position as it was. Whether the agreement to sell dated 20.05.2008 was executed in favour of defendant No.14? OPD.
- (iv) Whether the set off counter claim is not maintainable? OPP.
- (v) Whether the counter claim is liable to be dismissed as special costs? OPP.
- (vi) Whether the plaintiff is owner in possession of the suit property as alleged? OPP.
- (vii) Relief.

4. By judgment dated 10.07.2014, trial Court accepted the counter claim with costs and passed the decree of permanent injunction in favour of the defendants restraining the plaintiff from interfering in peaceful possession of Rajbir Singh over land measuring

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544 square yards. Plaintiff remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Rohtak vide judgment dated 04.11.2016. Instant present second appeal has been filed by the plaintiff in the above backdrop.

5. While making a reference to the pleadings, counsel for the appellant has argued that in their written statement, defendants have admitted that the plaintiff is in possession of the suit property although it was claimed that the possession is unauthorized. It is his argument that once the appellant is admitted to be in possession, no injunction can be granted against him. Counsel for the respondents have, however, argued that the appellant never lead evidence in support of the claim raised in the plaint and rather withdrew the suit. He has supported the impugned judgments and decrees.

6. I have heard counsel for the parties and considered their respective submissions besides examining the requisitioned record.

7. Appellant-plaintiff had filed a suit for possession claiming that he is exclusive owner in possession of the suit property, which he purchased from Karmu, predecessor-in-interest of respondents No. 1 to 10. The suit was withdrawn by him on a statement made by his counsel. Plaintiff did not lead any evidence in support of the assertion made in the plaint. A specific issue, "Issue No.6", was framed as to whether the appellant is he owner in

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possession of the suit property, as alleged. This issue was not pressed during the course of arguments and was decided in favour of the respondents, who had raised a counter claim. Appellant, therefore, cannot be permitted to urge that he is in possession of the suit property and injunction cannot be granted against him.

8. On the basis of the revenue record Ex.PX to PZ, respondents have established that Lok Ram was the owner of the land in khasra No. 246/32/2 and after his demise, it was inherited in equal share by Chandan Singh, Dharma, Karmu and Banti. After the death of Karmu, ownership of 1/4th share in the land devolved upon his legal representatives and a mutation was sanctioned in their favour. Revenue record does not reflect the sale of any portion of land nor does it show that the appellant was in possession of any portion of the said land. Reliance placed by the appellant on the agreement to sell Mark A does not lead credence to his claim as the document was never established by him in the course of evidence and rather he gave up his claim as has been noticed above. By leading ocular and documentary evidence, respondents have proved the agreement to sell Ex.DW8/A, whereby a part of the property inherited by them has been agreed to be sold to respondent No. 14 and possession has been delivered to him on payment of earnest money. As it stands established that respondent No. 14 has acquired property under the



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agreement to sell Ex.DW8/A, he is entitled to protect his possession. The suit has therefore, rightly been decreed in favour of the respondents. There is no illegality or infirmity in the judgments and decrees passed by both the courts, which are affirmed.

9. For the foregoing reasons, this Court does not find any merit in the appeal, which is dismissed with no order as to costs.

10. As the main appeal has been decided, all pending applications shall stand disposed off.

09.01.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No