

RSA No.4141 of 2018 (O&M)

2025:PHHC:159661



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4141 of 2018 (O&M)
Date of Decision: 17.11.2025

KISHAN CHAND (DECEASED) THROUGH HIS LR AND ANR.

.....Appellants

Vs

VIJAY KUMAR AND OTHERS

...Respondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Manoj Kumar Taya, Advocate
or the appellants.

Mr. Rajnish Gupta, Advocate and
Mr. Sachin Gupta, Advocate
for respondent No.1.

Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate
for respondent No.2.

HARKESH MANUJA, J. (Oral)

[1]. The present Regular Second Appeal has been filed against the judgment and decree dated 15.10.2016 passed by the learned Addl. District Judge, Karnal (for short the 'the Appellate Court'), whereby the judgment and decree dated 18.10.2012 passed by the Court of learned Civil Judge (Jr. Division) Karnal was set aside and consequently the suit for grant of permanent injunction filed by the plaintiffs/respondent Nos.1 and 2 was partly decreed.

[2]. Briefly stating, while claiming themselves in actual physical possession of the agricultural land measuring 34 Kanals comprised in Khewat No.574, Khatoni No.718, Rect. No.77, Killa No.2(8-0), 3(8-0), 4(8-13), 5(5-11), 8(3-16) vide *jamabandi* for the year 2003-2004, situated in village Kharazpur,



Tehsil and District Karnal, respondents Nos.1 and 2/plaintiffs filed a suit for permanent injunction with a prayer for restraining the appellants/defendants from interfering in their peaceful possession over the suit land. It was averred that the suit land was recorded as *Shamlat Deh Majkoor* in the revenue record with the father of respondent No.1 and 2/plaintiffs being in exclusive possession of the same being *gair marusi* with the entry in Column No.9 as “Billa Lagan Bawaja Nautor” and thus, the appellants/defendants, who happened to be their collaterals were required to be restrained from interfering into the peaceful possession of respondent Nos.1 and 2/plaintiffs.

[3]. Upon notice, the appellants/defendants appeared and contested the suit while stating that the land in question was originally in possession of the predecessor-in-interest of the parties namely Shobha Ram being *gair marusi*, who had four sons, Ram Chand, Kishan Chand, Bhawani Dass and Ram Lal. As per records, the appellants/defendants, happened to be the successors of Kishan Chand son of Shobha Ram whereas respondent No.1 and 2/plaintiffs were the heirs of Ram Chand son of Shobha Ram. It was pleaded that after the death of Shobha Ram, possession of the suit land was inherited by his four sons in equal shares including predecessor-in-interest of the appellants as well as the defendants and the parties to the suit were in possession of their exclusive share to the extent of 1/4th (8 Kanal 10 Marla only) whereas the revenue entries regarding possession of entire land in the name of Ram Chand were wrongly recorded. It was, thus pleaded that the suit filed by the plaintiffs was liable to be dismissed.

[4]. In terms of pleadings of the parties, following issues were framed by the learned Trial Court.



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- “i) Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for? OPP*
- ii) Whether the suit of the plaintiffs is not maintainable? OPD*
- iii) Whether the plaintiffs have got no locus-standi and cause of action to file and maintain the present suit? OPD*
- iv) Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*
- v) Whether the plaintiffs have suppressed the true and material facts from the Court? OPD*
- vi) Relief.”*

[5]. Vide judgment and decree dated 18.10.2012 passed by the learned Civil Judge (Jr. Divn.) Karnal, the suit filed at the instance of respondent Nos.1 and 2/plaintiffs was dismissed. Aggrieved thereof, the First Appeal came to be filed which was partly allowed by the learned Addl. District Judge, Karnal vide judgment and decree dated 15.10.2016 and consequently, the suit filed by the plaintiffs was partly decreed qua 25 Kanal 9 Marla of land; for the remaining 8 Kanal 11 Marlas of land the suit was withdrawn by plaintiffs, during pendency of first appeal.

[6]. Impugning the aforementioned judgment and decree passed by the First Appellate Court, learned counsel for the appellants/defendant Nos.1 and 2 while referring to the deposition made by PW-1 Sher Singh @ Shamsher Singh, who happens to be plaintiff No.2, submits that the possession of Kishan Chand/defendant No.1 was admitted by him on record and, therefore, the suit preferred at the instance of respondents No.1 and 2/plaintiffs qua the same was liable to be dismissed. Learned counsel thus, submits that the judgment and decrees passed by the First Appellate Court being based on incorrect appreciation

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of evidence available on record in the form of admission made by one of the plaintiffs himself was, thus liable to be set aside.

[7]. On the other hand, learned counsel for respondent Nos.1 and 2/plaintiffs while relying upon *jamabandis* for the year 2008-2009 (Ex.P-1) and 2003-2004 (Ex.P-2) submits that the predecessor-in-interest of the plaintiffs namely, Ram Chand was shown to be in exclusive possession of the land measuring 25 Kanal 09 Marlas, thus their appeal was rightly accepted by the learned First Appellate Court. Learned counsel also points out that a presumption of truth was attached to the entries recorded in the *jamabandis* in the name of predecessor-in-interest of respondent Nos.1 and 2/plaintiffs and since the same were never rebutted at the hands of appellants/defendant Nos.1 and 2, as such no interference was called for with the findings recorded by the learned First Appellate Court. Consequently, it was prayed that the appeal in hand was liable to be dismissed.

[8]. I have heard learned counsel for the parties and gone through the paper book as well as records of the case.

[9]. In the present case, the only dispute related to the possession of the parties over the subject land measuring 34 Kanals situated in the revenue estate of village Kharazpur, Tehsil & District Karnal. A perusal of the deposition made by PW-1 Sher Singh @ Shamsher Singh, who happens to be respondent No.2/plaintiff No.2 clearly records that Kishan Chand/defendant No.1 has also dug a bore well and installed tubewell connection in the land in question. The operative part of the deposition made by PW-1 Sher Singh @ Shamsher Singh to the said effect, in translated form is reproduced hereunder:-



“xxx xxx xxx... In this land a tubewell is also installed which is in the name of Ramesh-defendant. Defendant-Kishan Chand has also dug a borewell in this land. It is wrong that Ramesh and Kishan Chand have sown paddy in their own respective shares. Self stated that we have sown.”

[10]. No doubt, the entries made regarding possession in the *jamabandis* Ex.P-1 and Ex.P-2 carry presumption of truth in terms of Section 44 of the Punjab Land Revenue Act, 1887, however, the same were sufficiently rebutted in the present case in the wake of admission made by plaintiff No.2 (PW-1 Sher Singh @ Shamsher Singh) with respect to installation of tubewell by one of the defendant-Kishan Chand over the land in question in conjunction with the electricity bill receipts produced by the appellants/defendants in their evidence as Ex.D-5. The entries made in the *jamabandis* Ex.P-1 and Ex.P-2 with regard to the possession over the suit property were not to be relied upon. Reliance in this regard can be placed to a decision rendered by the Hon’ble Supreme Court in case of “*Mohan Balaku Patil and others Vs. Krishnoji Bhaurao Hundre (Dead) by LRs* reported as “1999 AIR (SC) Page 1114”. Paragraph No.4 being relevant is extracted hereunder:-

“4. It appears to us that the appellate authority could not have placed any reliance on the subsequent revenue records inasmuch as the appellants had constructed the building on the land in dispute; that the electricity bills had been paid by them; that the 1 and was in their possession. In the face of this finding of fact the appellate authority could not raise the presumption under Section 133 of the Act that the entries made in the record of rights was correct. When a finding of fact had been recorded that the appellants had been in possession it will be startling to hold that the respondent was himself cultivating the land. The rent paid by the appellants to the respondent and the partition in their family had no bearing on the question of possession of the land and cultivation thereof. When in fact the Tribunal



made local enquiry by spot inspection and had come to the conclusion that the appellants were in possession that factor should have weighed with the appellate authority, particularly in the face of the admission made by the respondent that the appellants had constructed the building on the land and were paying charges in respect of the electric pump set used for irrigating the land and ought to have held that the appellants were cultivating the land. In addition, the land in question was shown not to be cultivated by the respondent as the respondent was residing nowhere the land but at a far away place and that the land was not cultivated personally by the owner and the persons cultivating the land were not members of their family nor there was any evidence that the appellants were servants or hired labourers on wages and ought to have on that basis held the appellants as deemed tenant in respect of the land. The presumption arising under Section 133 of the Act in respect of the entries made in the record of rights stood displaced by the finding of fact recorded that the appellants were in actual possession of the land and were cultivating the same. In the face of such an admission made by the respondent it is difficult to accept the finding recorded by the appellate authority as affirmed by the High Court that in view of the entries made in the record of rights the appellants could not be stated to be in possession of the land on the relevant date nor was cultivating the same.”

Furthermore, in terms of the entries of possession in the *jamabandis* Ex.P-1 and Ex.P-2 been related to the predecessor-in-interest of the plaintiffs namely Ram Chand, who died way back in 2004, cannot be relied upon as the same stand in favour of a dead person thereby carrying no presumption attached to it even.

[11]. As a result of aforesaid discussion, the present appeal stands allowed and the judgment and decree dated 15.10.2016 passed by the learned First Appellate Court is hereby set aside thereby restoring the judgment and decree dated 18.10.2012 passed by the learned Trial Court and consequently, the suit for

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permanent injunction, filed by plaintiffs-respondent Nos.1 and 2 is dismissed.
Decree sheet be prepared accordingly.

[12]. All pending application(s), if any, shall also stand disposed of.

November 17, 2025
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(HARKESH MANUJA)
JUDGE

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