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

(103)

RSA-4297-2018

Date of decision:- 17.01.2025

Malkiat Singh

...Appellant

Versus

Darshan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ramesh Sharma, Advocate, for
Mr. Sukhdip Singh Brar, Advocate
for the appellant.

...

SUVIR SEHGAL, J. (Oral)

1. Appellant-plaintiff is in second appeal before this Court seeking modification of the finding recorded by the two Courts.
2. Plaintiff filed a suit for decree for permanent injunction restraining his brother, respondent-defendant, from forcibly obstructing him from using tubewell electric connection bearing No.X-301, installed on his land and for restraining the defendant from causing any damage to the boundary walls and the out-house of the plaintiff as shown in red and marked ABCD in site plan in Khasra No.16//13/1, Khatoni No.161, in village Badhni Khurd, Tehsil Badhni Kalan, District Moga, as per jamabandi for the year 2007-08.
3. Pleaded case of the plaintiff is that their father, Gujjar Singh, was irrigating the suit land, which was inherited by the parties in equal share. Plaintiff



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claimed that he was using an electricity connection for irrigating the agricultural land and had got the load enhanced from time to time. He averred that he got land in exchange from Mohan Singh, in lieu of land in Khasra No.16//13/1. He constructed an out-house for keeping livestock and got an electricity connection installed. Apprehending threat from the defendant, plaintiff filed the suit. Upon notice, suit was contested by the defendant by filing a written statement, wherein various preliminary objections were taken. Defendant averred that the plaintiff did not reveal that a family settlement had taken place about 15 years ago, and the electric connection as well as the room, wherein it had been installed, had fallen to his exclusive share. Defendant claimed to have constructed the boundary wall around the tubewell connection and constructed a room upon the land which fell to his share. It has been asserted that the mutation could not be sanctioned as the defendant had to return to New Zealand. Plaintiff did not file any replication and issues were framed on the basis of the pleadings of the parties. After contest, suit was accepted, in part, by the Trial Court and a decree dated 06.04.2016, was passed restraining the defendant from interfering in the use of the electricity connection by the plaintiff. As the prayer to restrain the defendant from damaging the boundary walls and out-house was declined, plaintiff filed an appeal, which has been rejected by the learned Additional District Judge, Moga, vide judgment dated 20.11.2017, resulting in the institution of the instant second appeal.

4. I have heard counsel for the appellant and considered his submission

besides examining the requisitioned record with his able assistance.



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5. An analysis of the evidence produced by the appellant shows that in lieu of his share in Khasra 16//13/1, he was given 15 marlas land in Khasra No.80 (1-11) bearing Khewat Khatoni No.96/168. Appellant was not the exclusive owner of Khasra No.88, and both the appellant and respondent had 1/4th share each, in this Khasra. As he is the co-sharer of this area, which came in his hand as in lieu of exchange, he cannot seek an injunction against the co-sharer. There is no error in the finding recorded by both the Courts and the judgments and the decrees passed by them are affirmed.

6. Finding no merit in the appeal, it is dismissed with no order as to cost.

(SUVIR SEHGAL)
JUDGE

17.01.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes/No