

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****106****RSA-5658-2018 (O&M)
Date of decision: 06.03.2025****Pala Ram****...Appellant(s)****Vs.****Rajesh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. R.S.Budhwar, Advocate for the appellant.***********NIDHI GUPTA, J.**

The defendant No. 1 is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit for Permanent Injunction filed by the plaintiffs/respondents No. 1 and 2 herein, has been decreed by both the Courts below.

At the very outset, it may be pointed out that the present appeal is of the year 2018. However, notice has not yet been issued in the same as the matter has been adjourned at request of learned counsel for the appellant on 30.01.2019, 11.12.2019, 11.02.2020, 16.08.2022, 07.11.2023, 14.03.2024, 07.08.2024, 04.09.2024 and 03.12.2024.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant No.1'; and the respondents No. 1 and 2 are the 'plaintiffs'.

3. Brief facts of the case as stated in the plaint are that the plaintiffs are owners in possession of residential plot/bara land measuring 0K 2M



pertaining to khewat No.1057, khatoni No.1304, rect. No.98, khasra No.19/41 vide jamabandi for the year of 2009-10 in the revenue estate of village Jalmana, Tehsil Assandh, District Karnal. The plaintiffs have constructed one room and store room and foundation of boundary wall and also placed bricks for further construction. The above said land was gifted/allotted to Sh. Rashala son of Sundu by the Gram Panchayat Jalmana vide gift/allotment deed No.1204 dated 4.5.1976 and the same was registered on 5.5.1976. Sh. Rashala has expired leaving behind his legal heirs who are the plaintiffs in the present suit. Plaintiff No.1 is the adopted, son and plaintiff No.2 is the widow of Rashala. Defendant is very strong handed person and also having bad intention upon the suit land of the plaintiffs and wants to interfere and encroach upon the suit land by dispossessing the plaintiffs illegally and unlawfully.

4. Defendants along with some bad element of the locality came at the suit land and tried to encroach upon the above said land by dispossessing the plaintiffs illegally and forcibly but could not succeed in their ill motive and evil design due to intervention of some respectable persons of village. The plaintiffs requested defendants not to interfere and encroach upon the suit land but the defendants are adamant in their ill motive. Constrained by these circumstances, plaintiffs filed the present suit.

.53. Upon notice, defendants appeared and resisted the suit by filing their written statement *inter alia* submitting that the defendant No.1 has purchased two plots from plaintiff No.2 for Rs.80,000/. The above said plots are existing out of which one plot was allotted to the husband of



plaintiff No.2 by the Gram Panchayat and adjoining other land was occupied by the husband of the plaintiff No.2. The plots were purchased on 1.5.2014 and on that day Rs.37,000/- was paid by defendant No.1 to the plaintiff No.2 and daughter and husband of the daughter. The remaining payment out of the above said amount was to be paid on 1.6.2014 to the plaintiff No.2. In this regard, a writing was made and plaintiff No.2 and her daughter and husband of the daughter as well as defendant No.1 and other attesting witnesses have signed the said writing. The plaintiffs used to quarrel regarding the above said plots upon which panchayat was convened and as per the decision of the panchayat the occupied plots/land was returned to the plaintiffs. At the time of purchasing the above said plot, the answering defendants have taken the possession of said plot and constructed two rooms and also constructed the boundary wall over the said plot and the defendants have also got electricity connection in the house and are residing in that house peacefully without any interruption. But now the plaintiffs have become dishonest and filed the present suit only to get more amount in garb of this suit. With these submissions, defendants have requested to dismiss the suit of plaintiff

6. On the basis of pleadings of the parties, the following issues were framed vide order dated 24.03.2014: -

1. Whether the plaintiff is entitled to decree for permanent injunction as claimed in the body of plaint? OPP.
2. Whether the present suit is not maintainable in the present form? OPD.



3. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD.
4. Whether there is no cause of action against the defendant? OPD.
5. Whether the suit of the plaintiff is an abuse on the process of law? OPD.
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
7. Whether the present suit is bad for misjoinder and non joinder of the parties? OPD.
8. Relief

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issue No. 1 in favour of the plaintiffs and against the defendants. Issues No. 2 to 7 were decided against the defendants being not pressed; and accordingly suit of the plaintiffs was decreed by the learned trial Court vide judgment and decree dated 23.04.2015. The appeal filed by the defendants was dismissed by Additional District Judge, Karnal vide judgment and decree dated 28.05.2018 affirming the findings of the learned trial Court. Hence, the present second appeal.

8. Learned counsel for the appellant/defendant No.1 submits that the learned Courts below have failed to appreciate that the disputed bara was sold by the plaintiff No.2 to the appellant which is evident from the writing Ex.D6. Ex.D6 has been duly proven by the evidence of DW3 Rattan Lal who has specifically stated that the writing Ex.D6 was executed in his presence and that the plaintiff No.2- Raj Bala had affixed her signatures and



thumb impressions upon the same. Similarly DW2 Babu Ram had specifically supported the version that the document (Ex.D6) was thumb marked/signed by plaintiff No.2 in the presence of other persons.

9. It is submitted that the learned Courts below were also in error in arriving to the conclusion that the land in dispute is Bara and that the same was gifted/allotted to Rashala, husband of the plaintiff No.2, by the Gram Panchayat Jalmana vide Gift Deed dated 05.05.1976 (Ex.P1), as per the terms and conditions of which land cannot be further sold.

10. It is reiterated that from the oral as well as documentary evidence led by the appellant, it was proven on record that plaintiff No.2 has sold the disputed Bara to the appellant and in this regard, writing was effected between plaintiff No.2 in the presence of daughter and husband of the daughter and other attesting witnesses, who had duly signed the said writing. It is also clear that the possession was handed over to the appellant; whereafter appellant had constructed 2 rooms and boundary wall over the said plot after which he had taken electricity connection. The appellant has been in possession of the land in dispute and residing in the same since 2004 peacefully without any interruption. However, all these evidence have been overlooked by the Courts below. 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 defendant No.1.

12. I have heard learned counsel for the appellant/defendant No.1 and perused the case file in great detail.



13. I find no merit whatsoever in the arguments advanced on behalf of the appellant. It has categorically come on record that the suit land/plot measuring 0K 2M was allotted to Rashala by the Gram Panchayat, Jalmana vide Hibinama/Gift Deed bearing No. 1204/1 dated 05.05.1976 (Ex.P1). Jamabandi (Ex.P2) for the year 2009-10 clearly shows the ownership and possession of Rashala over the suit land; and the plaintiffs being legal heirs of Rashala, therefore, they have full right and interest over the suit land.

14. It is also undisputed on record that as per Hibinama/Gift Deed (Ex.P1), the suit land was allotted to Rashala with the condition that the suit land would be kept by the LR's of allottee in case of his death; and that the LR's of Rashala would have no right to further transfer or sell the property to anyone. As such, contention of the appellant that the disputed suit land was sold by plaintiff No.2 to the appellant is misconceived.

15. Learned counsel for the appellant has placed relied upon Ex.D6, which is a document alleged to have been executed by plaintiff No.2 in favour of the appellant, as per which ownership and possession of the suit land was stated to have been transferred to the appellant. However, Learned counsel for the appellant is to establish the above averments. To prove the writing (Ex.D6), Id. Counsel for the appellant has placed reliance upon the evidence of DW3 Rattan Lal. The record shows that DW3 in his examination-in-chief had deposed that he was scribe of Ex.D6 and same bears thumb impression/signatures of plaintiff No.2. DW3 has further deposed that as per Ex.D6, plaintiff No.2 had sold two Baras to the



appellant for which the appellant paid Rs.37,000/- to her there and then; and the remaining Rs.43,000/- was to be paid later on by the appellant. DW3 has further stated that the appellant took possession of one Bara and possession of other plot was to be delivered after full and final payment. However, in his cross-examination DW3 has admitted that the said writing (Ex.D6) was never registered; that no Agreement to Sell was executed in respect of the said Baras; and even no mutation entry was made in respect of this transaction. He has further admitted in his cross-examination that he has no authority regarding recording any sale or purchase of land in his Bahi. DW3 could also not even inform whether he has written the date or not in his Bahi; and has admitted that no memorandum of Baras is mentioned in the Bahi. DW3 has further admitted that he could not identify the alleged thumb impressions affixed on writing (Ex.D6). As such, evidence of DW3 is not reliable.

16. As regards the evidence of DW2, the same is also liable to be rejected as DW2 Babu Ram has admitted in his cross-examination that he has not purchased or sold any land till date, and he has no knowledge if any such transaction has to be registered in Tehsil. DW2 also admitted that there is no mention of particular Bara in writing (Ex.D6); and further admitted that demarcation of the suit land was not conducted in his presence.

17. From the evidence on record, it is also established that the defendants failed to establish even their possession over the suit land let alone ownership of property in question. Needless to say, prior to seeking



any injunction, it was incumbent upon the defendants to show that they are the owners in possession of the suit property.

18. From the facts as noticed and narrated above, it becomes clear that the suit land was allotted to Rashala/husband of plaintiff No.2 by Gram Panchayat, Jalmana vide Hibinama/Gift Deed dated bearing No. 1204/1 dated 05.05.1976 (Ex.P1) with the condition as already noted herein-above. Revenue entry in respect of the ownership and possession of Rashala over the suit land is borne in jamabandi for the year 2009-10 (Ex.P2). The appellant has based his claim on a writing (Ex.D6) allegedly executed by plaintiff No.2 in favour of the appellant in the presence of daughter and son-in-law of plaintiff No.2 for a total sale consideration of Rs.80,000/-. However, bare reading of the writing (Ex.D6) shows that it is an unregistered document; no date is mentioned on the said writing; no description or dimensions of the land are mentioned in the said writing. As such, it is not clear as to how the appellant is stating that it was the suit land as fully described in the plaint which was sold to him vide Ex.D6. Even the thumb impressions of alleged vendor have not been proved by the defendants by examining any handwriting expert. Even no explanation has been given by the appellant as to why despite the fact that Ex.D6 was stated to have been executed in the year 2004, and payment of Rs.37,000/- was also made to plaintiff No.2 by the appellant, yet no Sale Deed was executed in respect of the said transaction. Besides the above, it is a mandatory requirement of Section 54 of the Transfer of Property Act, 1982 that any sale transaction of more than Rs.100 in respect of transfer of ownership in



case of tangible immovable property can be made only through registered instrument.

19. Learned counsel for the appellant has also stated that ownership of the appellant over the disputed property is borne out from the electricity bill (Ex.D1), bill receipts (Ex.D2) and photographs Mark-D1 and Mark-D2 which show that the appellant is in possession of the suit land since 2004. However, even this contention of the appellant is rejected as in the said bills and receipts, address of the bill holder has not been mentioned. In any event, the said documents would not confer any right of ownership or possession over the suit land; as also, long possession over any property does not confer ownership and right. Even the original of the writing (Ex.D6) was not produced by the appellant and only photostat copy thereof was placed on record.

20. Learned counsel for the appellant/defendant No. 1 is unable to dispute or controvert the above said facts and findings.

21. Accordingly, the present regular second appeal is **dismissed**.

22. Pending applications, if any, stand disposed of.

06.03.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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