



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

(115)

**RSA No.368 of 2020 (O&M)
Decided on: 25.03.2025.**

Surinder Kumar (since deceased) through LR's and others

...Appellants

Vs

Maninder Kaur

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. N.S.Sodhi, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

This is defendants appeal against the judgment and decree dated 27.08.2019 passed by the Court of learned Additional District Judge, Jalandhar, dismissing the appeal filed by the them against the judgment and decree dated 23.12.2016 passed by the Court of learned Civil Judge (Jr. Division), Jalandhar, vide which the suit filed by the plaintiffs for declaration was decreed and defendants were restrained from interfering into the lawful possession of the plaintiff over the suit property.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. The plaintiff (Maninder Kaur) filed a suit for declaration to the effect that she was the owner in possession of Plot No. EG-111/1, measuring 95 Sq. yards (4 Marlas 27 Sq. Ft) in Abadi Ladowali Mohalla, Guru Nanak Pura- Chogitti Road, Jalandhar (hereinafter referred to as the suit property), having purchased the same by way of registered sale deed dated 01.11.2010 executed by Hazur Singh being the general power of attorney holder Inderjit Singh. A decree for permanent injunction restraining the defendants from

interfering in the peaceful possession of the plaintiffs over the suit property and also restraining them from encroaching upon any portion of the suit property was sought. The case set up by the plaintiff was that initially one Sodhi Ram had purchased the suit property from Tehsildar (Sales) vide conveyance deed dated 06.05.1987 registered on 25.08.1987. Sodhi Ram sold the suit property to Inderjit Singh son of Hazur Singh vide registered sale deed dated 18.01.2000. Thereafter, Inderjit Singh appointed his father Hazur Singh as his general power of attorney holder and on the basis of the said general power of attorney dated 29.04.2008, Hazur Singh sold the suit property to Sant Singh by way of a registered sale deed dated 01.11.2010 for a total sale consideration of ₹6,30,000/-. It was averred that the defendants had no right in the suit property but they had been attempting to encroach upon the same by raising a wall, as a result of which Hazur Singh initiated some proceedings also. Since the defendants did not refrain from interfering in the peaceful possession of the plaintiff over the suit property, the suit was filed.

4. The suit was opposed by the defendants. Certain preliminary objections as regards *locus standi*, cause of action, the plaintiff having concealed true and material facts etc., were raised. It was averred that the plaintiff was neither the owner nor in possession of the suit property. Neither the correct number nor the correct description of the suit property had been given. It was averred that the defendants were owners of the property No. B-IX-2464 E.G 104 situated in the same area, the same having been purchased by Madho Ram vide registered sale deed dated 07.04.1969. It was averred that after the purchase of the said property, Madho Ram had constructed a boundary wall around the said plot. After the death of Madho Ram, the

property was inherited by Gurdev Ram, who raised certain construction including four shops and a residential house. A stand was taken that in front of the shops, earlier there was a canal which was not in existence at the time of filing of the suit. After the death of Gurdev Ram, the defendants had inherited the estate of Gurdev Ram. It was averred that the property which was open government property and which was earlier a canal but had dried up had been purchased by the plaintiff and was, therefore, trying to take forcible and illegal possession of the said open land. It was averred that proceedings under the Punjab Public Premises and land (Execution and Rent Recovery) Act, 1983, were also initiated against Gurdev Ram as Gurdev Ram was alleged to be in illegal possession over the said open plot. However, now the plaintiff wanted to take illegal possession of the said land in the garb of ownership of the suit property.

5. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed:-

- (1) Whether plaintiff is entitled to declaration to the effect that he is owner in possession of suit property ?OPP***
- (2) Whether plaintiff is entitled for injunction for restraining the defendants from encroaching upon suit property ?OPP***
- (3) Whether plaintiff has no locus standi to file the present suit as he is neither the owner nor in possession of suit property and has not disclosed the correct number of suit property ?OPD***
- (4) Whether plaintiff has no cause of action to file the present suit ?OPD***
- (5) Relief.***

7. Parties led their respective evidence. The trial Court decreed the suit filed by the plaintiff and the appeal filed by the defendants was dismissed leading to the filing of the present Regular Second Appeal.

8. I have heard learned counsel for the appellants.

9. Learned counsel for the appellants submits that the only dispute is that in the garb of seeking a declaration as regards plot No.EG-111/1, the plaintiff is trying to take possession of the open land which was earlier a canal. He submits that if demarcation is carried out, the position will be clear.

10. I have considered the submissions made by learned counsel for the appellants but find the same to be devoid of merit.

11. Absolutely no evidence was produced on record to show that any land in front of the suit property was earlier a canal. In any case, both Courts gave a declaration to the plaintiff only as regards the suit property that was plot No.EG-111/1 measuring 95 sq. yards and as per the site plan attached to the plaint. While agreeing with the plaintiff, the trial Court found as under:-

“21. From the appreciation of evidence produced by the parties and after hearing rival contentions of both the counsels, it comes out that plaintiff sought declaration qua property in dispute on the basis of sale deed dated 01.11.2010 executed by Hazur Singh, being power of attorney of Inderjit Singh in her favour. Perusal of documents reveals that plaintiff purchased the said property from Inderjit Singh through his attorney purchased the said property from Inderjit Singh through his attorney Hazur Singh vide sale deed dated 01.11.2010, who priorly purchased the same from

Sodhi Ram, whose rights were precipitated vide conveyance deed dated 06.05.1987. Plaintiff has proved on record the said conveyance deed by examining PW Jagdish Chander despite the fact that appropriate presumption of authenticity is duly attached with the said document being registered one. Apart from this, plaintiff has proved on record the sale deed dated 18.01.2000 executed by Sodhi Ram in favour of Inderjit Singh as Ex.P4 with the testimony of PW5 Joga Singh, Record Clerk from the office of Sub Registrar, Tehsil Complex, Jalandhar. The next document proved by plaintiff was general power of attorney Ex.P2 executed by Inderjit Singh in favour of Hazur Singh on 29.04.2008 by the same witness mentioned above. On the basis of said power of attorney, Hazur Singh executed sale deed dated 01.11.2010 in favour of plaintiff Maninder Kaur being proved by same witness as Ex.P2. It is very important to mention here that conveyance deed Ex.P3 depicted that plot No.H-E.G.111/1 has clearly been mentioned in sub part-1 of the conveyance deed alongwith the dimensions and later on, same dimensions were incorporated in the sale deed executed by vendor Sodhi Ram in favour of Inderjit Singh vide sale deed dated 18.01.2000 i.e. Ex.P4 and subsequent sale deed executed by Hazur Singh in favour of plaintiff Maninder Kaur vide sale deed dated 01.11.2010 i.e. Ex.P2. The only point agitated by the defendants is that suit property belongs to canal department and plaintiff is having no right, title or concern with the same. It is relevant to discuss here that on the one side, defendants claimed themselves to be owner of the property in dispute on the basis of natural succession of Gurdev Ram and sale deed dated 07.04.1969. On the other hand, they claimed that suit property falls in the area of canal department. It is important to mention here that defendants have taken two mutually destructive pleas to rebut the case of the plaintiff. Defendants even goes to the extent of pleading that their predecessor

Gurdev Ram was in illegal possession in the suit property, which clearly shows that neither the predecessors of defendants was having any valid right over the suit property nor defendants inherited any interest through natural succession. Moreover, defendants neither proved their ownership qua the suit property nor they established that canal department is having any proprietary interest in the property in dispute. Even the witnesses examined from the concerned department remained unsuccessful to prove any relationship of canal department with the suit property. Other witnesses examined by the defendants remained unsuccessful to shatter the case of plaintiff as well as her valuable rights. Therefore, this court found no impediment in concluding that plaintiff has proved all the documents relied upon by her specially in the circumstances, when authenticity is duly attached with them being registered documents. Accordingly, the contentions of the plaintiff are accepted.”

12. The First Appellate Court also agreed with the findings of the trial Court and found as under:-

“14. Plaintiff claimed that plot in question bearing No.EG-111/1 bounded as East: House Jeet Ram, West: Gali(street), North: Gali and shops of Gurdev Ram, South:Guru Nanak Pura-Chogitti Road from the side of Ladowali Road, Jalandhar was earlier purchased by one Sodhi Ram from Tehsildar(Sales)-cum-Managing Officer, Jalandhar vide conveyance deed dated 06.05.1987. Sodhi Ram sold the same to Inderjit Singh vide sale deed dated 18.01.2000. Inderjit Singh through his attorney Hazur Singh sold the same to plaintiff vide sale deed dated 01.11.2010 and delivered possession Civil Judge(Junior Division), Jalandhar vide judgment dated 12.02.2015 Ex. P7 and appeal preferred by them was dismissed by learned Addl.District Judge, Jalandhar

vide judgment Ex.P9. There is no evidence led by the defendants to prove that a canal was earlier in existence at the site of disputed plot and the said canal has dried and the area of the said canal is the disputed plot and the same is in their possession and is being used by them as a passage to their house. So defendants miserably failed to prove their case. On the other hand, from the title deeds referred above, it is found that plaintiff is owner of plot No.EG-111/1 and is in possession of the same. That being so, plaintiff is entitled to the relief of declaration as well as injunction.”

13. Learned counsel has not been able to point out any illegality or infirmity in the said findings and has not been able to point out any evidence which could have shown that the land in front of the suit property was earlier a canal and the same was being tried to be encroached upon by the plaintiff. As mentioned earlier, the declaration which was granted to the plaintiff was only as regards plot No.EG-111/1 and not as regards any other land.

14. Under the circumstances, I do not find any illegality in the concurrent findings of facts recorded by both Courts warranting interference in second appeal.

In view of the same, finding no merit in the present appeal, the same is dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

March 25, 2025

Rekha

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