

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****106****RSA-6560-2018 (O&M)****Reserved on : 05.02.2025****Pronounced on : 11.02.2025**

Jagram

....Appellant

VERSUS

Devinder Bhandari and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S. K. Tripathi, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 30.11.2015 and 10.07.2017 passed by the Trial Court and the First Appellate Court, respectively, dismissing the suit filed by him.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for permanent injunction for restraining the defendant-respondents from interfering in his possession over land falling in Rect. No.28, Killa No.2/1/2/2 (1-7) situated in Village Carterpuri, Tehsil and District Gurugram. It was averred by the plaintiff-appellant that he is owner in possession of the suit property and that the defendant-respondents have no right, title or interest in the suit property. According to the plaintiff-appellant the defendant-respondents are strong-headed, powerful and influential persons who are interfering in his peaceful ownership and possession over the suit property and are also adamant to dispossess him illegally and unlawfully.

It was further averred that the defendant-respondents have threatened the

plaintiff-appellant to falsely implicate him and his family members in criminal case instituted under SC/ST Act. The defendant-respondents filed written statement and contested the suit. They raised preliminary objections regarding cause of action, locus standi, maintainability, mis-joinder and non-joinder of necessary parties, estoppel and valuation. It was contended that the plaintiff-appellant had filed the suit with a malafide intention to restrain the Harijan Community of village Carterpuri from using and utilizing their own land reserved for 'Panghat' from which the community had been taking water since times immemorial. The site plan submitted by the plaintiff-appellant was stated to being incorrect and it was stated that the land on which the 'Panghat' was situated belonged to HUDA, Gurgaon which had carved out several residential plots and have allotted the same to different persons who have already constructed their houses thereon. It was submitted that plaintiff-appellant had produced an incorrect site plan so as to grab the property of Harijan Community and it was denied that the defendants were trying to interfere in the ownership and possession of the plaintiff-appellant. According to the defendant-respondents the Harijan community of the village had been drawing fresh drinking water from the land of 'Panghat' in Killa No.26 of Rect. No.28.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit property marked by letters ABCD and shown in red color as detailed in para no.1 of the plaint and from

encroaching upon any portion of the said suit property or any part thereof and from dispossessing the plaintiff from the suit property or any part thereof ? OPP

2. Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendants to remove the said encroachment and restore the possession of the plaintiff over the suit property ? OPP

3. Whether the plaintiff has no cause of action to file the present suit ? OPD

4. Whether the plaintiff has no locus standi to file the present suit ? OPD

5. Whether the plaintiff has concealed with material facts and has not come with clean hands before the court ? OPD

6. Whether the present suit is neither maintainable nor tenable in the eye of law ? OPD

7. Whether the suit is bad for mis joinder and non joinder of necessary parties ? OPD

8. Whether the plaintiff is estopped from filing the present suit by his own acts, conduct, admissions, commissions, omissions, acquiescence and latches ? OPD

9. Whether the suit is not properly valued for purposes of court fee and jurisdiction ? OPD

10. Relief.

4. The Trial Court vide judgment and decree dated 30.11.2015 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 10.07.2017. Hence, the present regular second appeal by the plaintiff-appellant.

5. The learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing the suit. It is urged that the plaintiff-appellant was in possession of the suit property and the Courts ought to have granted the injunction and protected his possession.

6. Heard.

7. In the present case both the Courts have found that the plaintiff-appellant had been unable to prove his exclusive possession over the suit property falling in Rect. No.28, Killa No.2/1/2/2 (1-7). The only revenue record produced by the plaintiff-appellant in the form of Ex.P1 does not even mention Rect. No.28, Killa No.2/1/2/2 (1-7). It has been noticed by the Courts that qua the suit property another co-sharer had earlier filed a similar suit against the defendant-respondents which was withdrawn which fact was not disclosed by the plaintiff-appellant. Apart from the oral testimonies, the plaintiff-appellant could not establish from any cogent documentary evidence that the suit property was in his exclusive possession. No documentary evidence has been pointed out to establish the exclusive possession of the plaintiff-appellant. In a suit for permanent injunction a plaintiff has to make out and establish his possession which in the present case the plaintiff-appellant has failed to do. There is no material available on the record to make out a case for decreeing the suit of the plaintiff-appellant. No other point has been argued.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

**(ALKA SARIN)
JUDGE**

11.02.2025
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO