



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

**RSA No.1853 of 1990 (O&M)
Reserved on: 30.04.2026
Pronounced on: 06.05.2026
Uploaded on: 07.05.2026**

Babu Singh (since deceased) through LRs

.....Appellant.

Versus

Karamjit Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present:- Mr. Kewal Krishan, Advocate
for the appellant.

Ms. Shubreet Kaur, Advocate
for respondents No.2(i).

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Shrey Sachdeva, Advocate
for respondent No.3(i).

VIKRAM AGGARWAL, J.

1. This is plaintiff's appeal against the judgment and decree dated 10.01.1990 passed by the Court of Additional District Judge, Ludhiana, allowing the appeal against the judgment and decree dated 20.09.1988 passed by the Court of Sub Judge 1st Class, Ludhiana, vide which the suit filed by the plaintiff had been decreed, thereby dismissing the suit.

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

3. Plaintiff (Babu Singh) instituted a suit for perpetual injunction restraining the defendants (Dewan Mohan Lal Singh and Kamaljit Singh) from forcibly dispossessing the plaintiff from the property bearing Municipal No.923 situated at Sherpur Khurd, Tehsil and District Ludhiana (fully described in the plaint) (hereinafter to be referred as the 'suit property').

3.1. It was averred that the plaintiff was the owner in possession of the suit property by way of registered sale deed dated 20.01.1972. It was averred that on 20.07.1984, the defendants threatened to dispossess the plaintiff from the suit property. It was averred that the defendants were neither owners nor tenants in the suit property, as a result of which they had no right to dispossess the plaintiff except by due process of law.

3.2. Since the defendants did not accede to the request of the plaintiff, the suit was instituted.

4. The suit was contested only by defendant No.2 Kamaljit Singh. In the written statement, certain preliminary objections were raised. It was averred that the suit was not maintainable in view of the undertaking given by the plaintiff in a suit for permanent injunction in respect of the same premises filed by the defendant (Kamaljit Singh) on 27.07.1984. It was averred that in view of the said statement, continuation of the suit was an abuse of the process of law.

4.1. It was averred that in the suit for permanent injunction filed by the defendant against the plaintiff in respect of the suit property, temporary injunction had been granted on 09.04.1983 vide which the plaintiff (Babu

Singh) was restrained from interfering in the possession of the plaintiff therein (Kamaljit Singh) in the suit property except in due course of law. The order was extended from time to time and finally, the statement was given by the plaintiff on 27.07.1984.

4.2. It was averred that the plaintiff had not approached the Court with clean hands as he was not in possession of the suit property at the time of filing of the suit.

4.3. It was claimed that the defendant was in actual physical possession of the suit property, having taken the same from one Ashok Kumar on a monthly rent of Rs.100/- vide rent note dated 05.01.1983. It was averred that the suit property was numbered as 372/1 B.XXX in the records and was shown to be owned by one Ashok Kumar and in possession of M/s Chaudhary Sales Corporation Cement Depot. It was averred that the defendant was carrying on the said business under the aforesaid name.

On merits also, the same stand was taken.

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

- (1) Whether the plaintiff is entitled to injunction prayed for? OPP
- (2) Whether the suit in the present form is not maintainable? OPD
- (3) Relief.

6. Parties led their respective evidence.

7. The trial Court decreed the suit filed by the plaintiff which led

to the filing of an appeal. The first Appellate Court, however, reversed the decision and dismissed the suit leading to the filing of the instant appeal.

8. Learned counsel for the parties were heard.

9. It was strenuously urged by learned counsel for the appellant/plaintiff that the first Appellate Court had erred in reversing the well-reasoned judgment passed by the trial Court. It was argued that the trial Court had rightly found that the rent note Ex.D1 appeared to be a fictitious document. It was submitted that the trial Court had rightly observed that in the written statement, it had been pleaded that the rent note was executed on 01.05.1983 whereas rent note Ex.D1 showed that the stamp papers were first purchased on 04.03.1983 and the rent note Ex.D1 was executed on 25.03.1983. It was submitted that the trial Court had, therefore, rightly found that the defendant had set up rent note dated 05.01.1983 whereas rent note produced by him is dated 25.03.1983 and, therefore, the rent note Ex.D1 seems to be a fabricated document.

9.1. It was argued that the trial Court had also rightly found that Ashok Kumar had not been able to prove that he was the owner of the suit property and under the circumstances, he was not able to show as to how he had executed the rent note Ex.D1 in favour of the defendant. Ashok Kumar was, in fact, the son of defendant No.1 Dewan Mohan Lal Singh.

9.2. Learned counsel submitted that the defendant had filed another suit for permanent injunction (Suit No.81 of 31.01.1985) which had been dismissed vide judgment Ex.P5 in which it was held that it was Babu Singh, who was in possession of the suit property and that Ashok

Kumar was not the owner and had no authority to execute rent note in favour of the defendant.

9.3. Learned counsel has referred to the judgment of the trial Court in detail and submitted that there was no occasion for the first Appellate Court to reverse the findings recorded by the trial Court.

10. Per contra, it was submitted by learned Senior counsel representing the respondents that there is no illegality in the findings recorded by the first Appellate Court. It was argued that the plaintiff cannot be permitted to resile from his statement given in the Court of law on 27.07.1984. It was pointed out that the instant suit was filed on 21.07.1984 and the statement was given on 27.07.1984 and the objection regarding the same was also taken in the written statement. It was submitted that insofar as the decree dated 13.08.1987 Ex.P5 is concerned, the same does not have any bearing on the instant matter because of the categorical statement having been given by the plaintiff on 27.07.1984. It was also submitted that even now, the Local Commissioner can be appointed to ascertain the possession over the suit property.

11. I have considered the submissions made by learned counsel for the parties.

12. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead)***

through LRs and others V/s Chandrika and others, (2016)6 SCC 157, followed by the judgments in the cases of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

13. There are rival claims of possession over the suit property. Apart from the instant suit, out of which the present appeal arises, earlier a suit had been instituted by defendant No.2 (Kamaljit Singh) against plaintiff (Babu Singh) for permanent injunction restraining Babu Singh from interfering in possession of Kamaljit Singh over the suit property. In that case, a statement was given by learned counsel for Babu Singh on 27.07.1984 which is stated to have been signed by Babu Singh as well that he would not forcibly take the possession of the suit property from the plaintiff (Kamaljit Singh) and would take its possession only by the due process of law. It was also stated that Kamaljit Singh was not his tenant and was in illegal possession of the suit property.

14. The instant suit (from which the present RSA has arisen) was filed on 21.07.1984 by Babu Singh. The statement in the previous suit was, therefore, given 06 days after the institution of the present suit.

15. Karamjit Singh instituted another suit for permanent injunction on 31.01.1985 which was dismissed vide judgment and decree dated 13.08.1987 Ex.P5. In the said judgment, the trial Court did not place reliance upon the statement dated 27.07.1984 having been given by Babu

Singh and held that the said statement had been given by the counsel of Babu Singh and no reliance could be placed upon the same. The appeal against the said judgment and decree is also stated to have been dismissed.

16. We are, therefore, faced with a situation where on the one hand, there is a statement of counsel for Babu Singh, counter-signed by Babu Singh, given in a Court of law, admitting the possession of Kamaljit Singh over the suit property and stating that he would not be evicted except in due course of law. On the other hand, we have the judgment dated 13.08.1987 Ex.P5 vide which the suit of Kamaljit Singh was dismissed. It is incomprehensible as to why Kamaljit Singh had to file another suit, after the statement dated 27.07.1984 having been given. Kamaljit Singh did make a reference to the statement dated 27.07.1984 in the suit but, as stated, the same was discarded.

17. Then, is the present suit, out of which the instant appeal arises.

18. To settle the issue, we would have to fall back upon the evidence led in the present case and the findings recorded by both Courts.

19. First of all, this Court is of the considered opinion that Babu Singh cannot be permitted to resile from the statement Ex.D12 having been given in Court by his counsel and counter-signed by him. If it was the case of Babu Singh that no statement had been given, the counsel representing Babu Singh in the said suit could have been summoned. The record could have been summoned and Babu Singh could have proved that no such statement had been given. However, nothing of the sort was done.

20. The judgment dated 13.08.1987 Ex.P5 would lose its

significance in view of the categorical statement having been given in the previous suit filed by Kamaljit Singh.

21. The first Appellate Court examined the matter from the correct perspective and rightly held that in the latest Jamabandi Ex.D5 for 1984-85, Ashok Kumar etc. had been shown to be in possession of the suit property. It was rightly observed that Kamaljit Singh had also successfully proved that he was running a cement depot on the site in dispute and that Babu Singh had not been able to show that the property in which Kamaljit Singh was in possession was different from the suit property. The findings recorded by the first Appellate Court are required to be reproduced:

“7. Bachan Kaur PW-1 has stated that the disputed shop and the plot are owned by her husband Babu Singh. She is his Mukhtiar-am. Ex.P-1 is the photostat copy of the Mukhtiar-nama-am. They were away to Simla and when they returned they were asked by Diwan Mohan Lal Singh to get out of the plot and the shop but they refused. As there was apprehension of breach of peace, proceedings under section 145 Cr.P.C. were initiated by the police with regard to the possession of this plot, in the court of Shri S.S. Gill Executive Magistrate, Ludhiana. None of the defendants appeared before Shri S.S. Gill, Executive Magistrate Ludhiana and the Magistrate asked them to take keys from the police. The stay order of the Magistrate is Ex.P-2. What she means to state is that in the beginning the police took into possession the keys of the disputed shop and the plot from Babu Singh. As Dewan Mohan Lal Singh etc. did not appear before the Executive Magistrate. The Executive Magistrate did not proceed further and ordered the termination of the proceedings. There is a separate order mark 'A' regarding that keys be delivered to Babu Singh. Keys have not been delivered to Babu Singh so far by the police. Dewan Mohan Lal Singh is retired Thanedar. He is in league with the police. She stated that her husband purchased this property vide sale-deed dated 20.1.72 from Sher Singh. Sale deed is Mark-G and the property measured $201\frac{1}{18}$ square yards comprising Khasra No.14/1-9-10. Khata No.130/70, Mauza Sherpur Khurd. She has stated that in the record of the Municipal Corporation Ex.P-3 her

husband Babu Singh is shown as in possession. Property bears municipal No.923. In this property, there is Babu Singh's residence. In Jamabandi Ex.P-7 Khasra No.14/1-9-10, 5 kanals 18 Marlas is shown to be owned by the Central Government and is an evacuee property in possession of Siri Ram son of Karta Ram son of Kishan Dyal, Smt. Heeran Wanti wife of Siri Ram son of Karta Ram in equal shares. Vide mutation No.1047 Heera Wanti sold the property in favour of Sher Singh son of Sunder Singh but that mutation was not sanctioned. Heera Wanti could sell the property to Sher Singh, if she had some title there to. If Sher Singh had some title thereto, Sher Singh could sell that property to Babu Singh. Kamaljit Singh DW-1 stated that he is running Cement Depot on the plot in dispute. He was granted licence by the District Food and Supplies Controller, Ludhiana, to deal in Cement. He has been running the Cement Depot on the plot in dispute since the year 1987. He got the plot in dispute on rent from one Ashok Kumar son of Dewan Mohan Lal Singh. There is a room on the plot in dispute which is enclosed by forewall. Plot in dispute is situated in village Sherpur Khurd i.e. within the limits of Municipal Corporation, Ludhiana. He executed rent note Ex.D-1 in favour of Ashok Kumar on 25.3.84 Ex.D-3 is licence issued to him by the District Food and Supplies Controller Ludhiana under the Punjab Cement Licencing and Control Order 1973. Licence commenced on 18.8.1983. In this licence, he was permitted to carry on the business of Cement in Shop No.372/1, B-XXX. Notice under section 103-D of the Punjab Municipal Corporation Act, 1976 was issued to Ashok Kumar son of Dewan Mohan Lal Singh calling upon him to pay house tax on this property for 1983-84 to the tune of Rs.135/-. In Jamabandi Ex. D-5, Ashok Kumar son of Dewan Mohan Lal is shown to be in possession of 29/118 share in land measuring 5K-18 Marlas comprising Khasra No.14/1-9-10. Siri Ram son of Karta Ram and Heera Wanti wife of Siri Ram are shown to be in possession of 89/118 share as Gair Maroosian Doem. In column No.9, the entry is Gair Marusi Bila Lagaan Bawazah Kharid from Ashok Kumar Bawazah Tabadla with village Dholewal from Siri Ram. In assessment record Ex.D-6 of Municipal Corporation Ludhiana, Babu Singh is shown in possession as owner of property Municipal No.923, BXXX. In Jamabandi Ex.P-7 there is a note that mutation No.1416 was entered in the name of Babu Singh on account of sale by Sher Singh of seven marlas, out of Khasra No.14/1-9-10 measuring 5 Kanals 18 Marlas, but the same was not sanctioned. It is thus clear that Khasra no.14/1-9-10 is owned by the Central Govt. and it is an evacuae property. In the latest jamabandi Ex.D-5 for 1984-85 Ashok Kumar etc.

are shown to be in possession. Babu Singh has not been able to show that he is in possession. On the other hand, it has been shown by Kamaljit Singh defendant that he is running cement depot on the site in dispute bearing shop No.372/1, BXXX, the municipal corporation assessed house tax on shop No.372/1, BXXX measuring 139 square yards. Babu Singh has not been able to shown that property bearing municipal No.923, BXXX is different from that property where the Cement Depot of Kamaljit Singh is located.”

22. It was also rightly held that the statement of Babu Singh, given on 27.07.1984 was corroborated from the House-Tax Record Ex.D10 which showed that M/s Chaudhary Sales Corporation Cement Depot was in possession of the suit property.

23. The findings recorded by the first Appellate Court do not suffer from any illegality, warranting interference in second appeal. In fact, the first Appellate Court rightly set-aside the judgment passed by the trial Court as the trial Court had not examined the matter from the correct perspective.

24. In view of the aforesaid discussion, the instant appeal is found to be devoid of merit and is accordingly dismissed.

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

May 06, 2026
Yag Dutt

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No