

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2096-1993
Decided On: 20.04.2026

KITABUDIN AND ANR.

....APPELLANT

VERSUS

ZAMIL AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Rajinder Goel, Advocate with
Ms. Ansvi Parnami, Advocate and
Mr. Nayjyot Singh, Advocate for the appellants

Mr. Hemant Bassi, Sr. Advocate with
Mr. Kewal Singh, Advocate for the respondents.

SANDEEP MOUDGIL, J

1. The present Regular Second Appeal (RSA) has been preferred by the defendant–appellants against the judgment and decree passed by the learned Lower Appellate Court, whereby the appeal filed by the appellants was dismissed as not maintainable. The appellants have also assailed the judgment and decree of the learned Trial Court, by which the suit filed by the plaintiff–respondents was decreed in their favor.

2. The brief facts necessary for adjudication of the present appeal are that the plaintiff–respondents instituted a suit for permanent injunction against the defendant–appellants. It was averred that the father of plaintiff No. 4, and thereafter the plaintiffs themselves, had been in cultivating possession of the land comprised in Khasra Nos. 1330 and 1338. It was alleged that the said land had been wrongly allotted to one Neki, son of Gainda, during consolidation

proceedings. It was further the case of the plaintiffs that Neki, son of Gainda, did not have an undisputed or better title in the suit property, and therefore any alienation effected by him in favour of defendant Nos. 1 to 3 was illegal, null and void. During the pendency of the proceedings, the said land was further alienated in favour of defendant Nos. 4 and 5, who are the present appellants.

4. The defendants contested the suit, contending that the plaintiffs had no right, title, or interest in the suit property. It was also asserted that defendant Nos. 1 to 3 had validly sold the land to the appellants by way of registered sale deeds dated 15.07.1985 and 26.07.1985.

5. Upon consideration of the pleadings and evidence on record, the learned Trial Court decreed the suit vide judgment and decree dated 29.11.1990 in favour of the plaintiffs. Aggrieved thereby, defendant Nos. 4 and 5 preferred an appeal before the learned Lower Appellate Court.

6. The learned Lower Appellate Court, however, dismissed the appeal on the ground that the same was not maintainable as necessary parties had not been impleaded. Aggrieved by the aforesaid dismissal, the present RSA has been filed before this Court.

7. Mr. Rajender Goel, learned counsel for the appellants, has contended that the learned Lower Appellate Court erred in dismissing the appeal on a preliminary objection without properly appreciating the facts and circumstances of the case, and based its conclusion on conjectures and surmises.

8. It is argued that although the appellants were in possession of the suit property pursuant to valid registered sale deeds, the learned Trial Court erroneously held the plaintiff-respondents to be in possession and granted a decree

for permanent injunction restraining the defendants from exercising their lawful rights over the property.

9. It is further contended that the appellants, having stepped into the shoes of defendant Nos. 1 to 3 by virtue of the purchase, were competent to maintain the appeal. The plaintiff-respondents did not raise any objection regarding non-impleadment of defendant Nos. 1 to 3 at the initial stage and only raised such objection at the time of hearing, contending that the appeal was not maintainable. It is submitted that the application for impleadment of defendant Nos. 1 to 3 was wrongly rejected by the learned Lower Appellate Court, and the appeal was dismissed in a mechanical manner on account of a curable procedural defect, thereby causing serious prejudice to the appellants.

10. Placing reliance upon the judgment of this Court in **Ram Chander vs. Amar Singh, 1973 RLR 716**, and drawing attention to the provisions of Order XLI Rule 4 of the Code of Civil Procedure, learned counsel submits that the appeal was maintainable, and its dismissal by the Lower Appellate Court is legally unsustainable.

11. On these grounds, learned counsel for the appellants prays that the impugned judgments and decrees passed by both the courts below be set aside, and the matter be remitted to the learned Lower Appellate Court for fresh adjudication in accordance with law.

12. Heard.

Substantial question of law

1. *“Whether the dismissal of the appeal on the ground of non-maintainability by the First Appellate court is legally sustainable?”*
2. *“Whether the decree for permanent injunction in favour of the plaintiffs, based on their alleged continuous possession, is legally sustainable?”*

Analysis and Findings

Issue no. 1: Whether the dismissal of the appeal on the ground of non-maintainability by the First Appellate court is legally sustainable?

13. At the outset, the issue of maintainability on the ground of non-impleadment of defendant Nos. 1 to 3, this Court is of the considered view that the learned Lower Appellate Court has fallen into error in treating the said defect as fatal to the appeal. The reasoning proceeds on an overly technical and rigid application of the concept of “necessary parties”, without appreciating the settled principles governing appeals under the Code of Civil Procedure, 1908 (CPC).

14. It is well settled that the non-joinder of parties does not *ipso facto* render proceedings non-maintainable unless the party not impleaded is a necessary party in the strict sense, i.e., a party in whose absence no effective decree can be passed. The Supreme Court in “**Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524**”, has clearly distinguished between necessary and proper parties and held that only those without whom no effective adjudication is possible are necessary parties, whereas others whose presence may assist complete adjudication are only proper parties. Relevant extracts are as under:

“Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those

persons as defendants against whom he wishes to proceed though under Order 1 Rule 3, to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon the settle all the question involved in the suit.

6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the tough stone Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

7. The respondents do not seriously dispute the position that the second respondent is not a necessary party to the suit in the sense that without their presence an effective order cannot be passed. However, they support the view that respondent No. 2 is a proper party whose presence is necessary for a complete adjudication on the controversy. In the light of the clear language of the Rule, it is not open to the appellant to contend that a person cannot be added as defendant even in a case where his presence is necessary to enable the Court to decide the matter effectively.

8. The case really turns on the true construction of the Rule in particular the meaning of the words "whose presence before the Court may be necessary in order to enable to Court effectually and completely to adjudicate upon and settle and the questions involved in the suit". The Court is empowered to join person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presdence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions”.

15. A similar principle has been reiterated by the Supreme court in **Mumbai International Airport (P) Ltd. v. Regency Convention Centre, (2010) 7 SCC 417**, wherein it was held that impleadment is required only when the party has a direct legal interest in the subject matter of litigation, while holding that:

In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

9. The learned counsel for the appellants relied upon the following observations of a two-Judge Bench of this Court in **Sumtibai v. Paras Finance Co., 2007(4) RCR (Civil) 524 : 2007(2) RCR (Rent) 471 : 2007(5) R.A.J. 384 : 2007(10) SCC 82**, to contend that a person need not have any subsisting right or interest in the suit property for being impleaded as a defendant, and that even a person who is likely to acquire an interest therein in future, in appropriate cases, is entitled to be impleaded as a party :

*"Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in **Kasturi v. Iyyamperuma, 2005(2) RCR (Civil) 691 : 2005(6) SCC 733**. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. **In our opinion, the** aforesaid decision is clearly distinguishable. **In our opinion, the** aforesaid decision can only be understood to mean that a third party cannot be impleaded in*

a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute..... It cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. If C can show a fair semblance of title or interest he can certainly file an application for impleadment."

16. In the present case, once the appellants/defendant Nos. 4 and 5 had stepped into the shoes of defendant Nos. 1 to 3 through registered sale deeds, the latter ceased to have any subsisting or enforceable interest in the property. Their rights, if any, stood fully transferred, and therefore, no effective relief was required to be adjudicated against them. The controversy, in essence, remained confined between the plaintiff and the subsequent purchasers. In such circumstances, defendant Nos. 1 to 3 cannot be elevated to the status of necessary parties so as to non-suit the appellants on a purely procedural omission.

17. Furthermore, Order I Rule 9 CPC mandates that no suit shall fail for non-joinder of parties except in cases of non-joinder of a necessary party, thereby underscoring that procedural defects must yield to substantial justice. Viewed thus, the dismissal of the appeal on the ground of non-impleadment of defendant Nos. 1 to 3 amounts to an unduly technical approach, contrary to the settled principle that procedural law is handmaiden of justice and not its mistress. Thus, the first issue is answered in the favor of the defendant-appellants.

Issue no. 2: Whether the decree for permanent injunction in favour of the plaintiffs, based on their alleged continuous possession, is legally sustainable?

18. It is well-settled that possession, even in the absence of perfected title, is a right recognized in law and is entitled to protection against unlawful interference. In **Rame Gowda v. M. Varadappa Naidu 2004 (1) SCC 769**, the Supreme Court authoritatively held that a person in settled possession cannot be dispossessed except by due process of law, even by the true owner. This principle forms the bedrock of suits seeking injunction simpliciter. Relevant extract is as under:

The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted.

*9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to **Munshi Ram and Ors. v. Delhi Administration - (1968) 2 SCR 455**, **Puran Singh and Ors. v. The State of Punjab - (1975) 4 SCC 518** and **Ram Rattan and Ors. v. State of Uttar Pradesh - (1977) 1 SCC 188**. The authorities need not be multiplied. In **Munshi Ram & Ors.**'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner.*

19. The sustainability of the decree for permanent injunction in favor of the plaintiffs stands fortified not merely on broad principles of law, but on a careful and consistent evidentiary foundation emerging from the trial court record.

20. In the present case, the trial court, upon appreciation of the material on record, returned a categorical finding that the plaintiffs were in continuous and cultivating possession of the suit land. The evidence led by the plaintiffs establishes a long, uninterrupted chain of cultivating possession. The trial court has specifically noticed entries in the khasra girdawari from the years 1965–1970 (Ex. P7) showing that the father of the plaintiffs was in cultivating possession of the suit land. This is not an isolated entry. It is followed by subsequent revenue records—khasra girdawari for 1981–82 (Ex. P3), 1985–88 (Ex. P4)—which consistently record the plaintiffs themselves to be in cultivating possession. The continuity across decades is crucial. It demonstrates that possession was not casual or stray, but settled, hereditary, and agrarian in character.

21. The evidentiary value of these entries is further strengthened by the fact that even the defendants, in their own evidence, produced copies of khasra girdawari which corroborate, rather than displace, the plaintiffs' possession. The trial court has noted that though there may have been an entry showing the defendants in possession for a limited period (1986–87), in pursuance to the allotment in favor of the defendant-appellants, the subsequent entries again revert in favour of the plaintiffs (1987–1989). Such stray entries, as correctly appreciated by the trial court, do not dislodge long-standing possession; rather, they indicate at best a temporary disturbance, not lawful transfer of possession.

22. Equally significant is the absence of any cogent proof from the defendants regarding lawful delivery of possession pursuant to consolidation proceedings. Though the defendants relied upon allotment during consolidation (1982–83), the trial court has recorded that there is no rapat roznamcha or contemporaneous record evidencing actual delivery of possession to them. Without proof of delivery, allotment remains paper title without physical control. This lacuna strikes at the root of the defendants' claim.

23. On the contrary, the plaintiffs' case gains corroboration from independent circumstances. The record reflects that when the defendants attempted to assert possession, the plaintiffs were constrained to initiate proceedings, including complaints before the police, which culminated in proceedings under Sections 107/151 Cr.P.C. These contemporaneous acts are consistent only with a party in possession seeking protection, not one attempting to assert a dormant or speculative claim.

24. The oral evidence also aligns with the documentary record. The testimony of PW1 (plaintiff Jahoor) and other witnesses affirms that the plaintiffs were in cultivating possession since forefathers. Importantly, even the defence witnesses, while attempting to support the defendants' case, could not establish continuous possession in their favour. At best, they suggested cultivation for a short duration, which again fails to meet the threshold of settled possession in law.

25. The trial court has also correctly appreciated the legal consequence of the consolidation proceedings. Even if the land stood allotted to defendants No. 1 to 3, the remedy available to them was to take possession through lawful process, not by force. The evidence on record indicates that the attempt was one of forcible

dispossession, which the civil court is fully competent to restrain. The civil court has not adjudicated upon the validity of consolidation proceedings per se, but has confined itself to the limited and legitimate inquiry, who was in possession and whether such possession was under threat otherwise than in due course of law.

26. The nature of the decree passed further reinforces its legality. The trial court has consciously restricted the relief to injunction against forcible dispossession, while expressly preserving the right of the defendants to recover possession through due process.

27. The case set up by the defendants is founded upon allotment during consolidation proceedings and subsequent sale deeds executed in their favour. The evidence on record indicates that the grievance of the plaintiffs arose from an attempt by the defendants to interfere with their possession otherwise than in accordance with law. In such circumstances, a suit for permanent injunction is clearly maintainable. The position stands clarified in “**Anathula Sudhakar v. P. Buchi Reddy 2008 INSC 395**”, wherein it was held that where a plaintiff is in possession and faces threat of dispossession, a suit for injunction simpliciter is an appropriate remedy, while observing that, “*Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie*”

28. Significantly, the decree granted by the trial court is narrowly tailored. The defendants have merely been restrained from dispossessing the plaintiffs except in due course of law. The decree does not adjudicate title nor does it foreclose the rights of the defendants to seek possession through appropriate legal

proceedings. It thus strikes a balance between competing claims while ensuring adherence to the rule of law.

29. In view of the above, this Court finds no legal infirmity in the decree passed by the trial court. The protection granted to the plaintiffs is consistent with settled principles governing possessory rights and injunctions. The issue no. 2 is accordingly answered against the appellants.

Conclusion

30. The present Regular Second Appeal is devoid of merit and is accordingly dismissed.

31. Pending applications, if any, shall also stand disposed of.

20.04.2026
anuradha

(SANDEEP MOUDGIL)
JUDGE

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