

2026:PHHC:058087



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

RSA-3218-1997 (O&M)

Judgment reserved on :10.02.2026

Judgment pronounced on 17.04.2026

SUNDER LAL @ SURENDER SINCE DECEASED THROUGH LRS

... APPELLANT

VERSUS

SHRI BHAGWAN AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Mani Ram Verma, Advocate (through V.C.)
for the appellant.

Mr. Akshay Kumar Goel, Advocate
for the respondents.

PARMOD GOYAL, J.

1. The present regular second appeal has been preferred by unsuccessful appellant-plaintiff being aggrieved by the judgment and decree dated 04.09.1997 passed by the Additional District Judge-II, Bhiwani, whereby the first appeal preferred by the defendant against the judgment and decree dated 09.01.1997 passed by the Additional Civil Judge (Senior Division), Charkhi Dadri, was accepted and the suit of the appellant-plaintiff for permanent injunction was dismissed.

2. Appellant-plaintiff, in his suit for permanent injunction, claimed that the suit property (Bada), shown by letters ABCD in the site plan (Ex. P-1) attached with the plaint, situated within the 'Lal Dora' of village Dudiwala Nand

Karan, Tehsil Dadri, District Bhiwani, was originally owned by his grandfather, Harsukh. The same was inherited by his father, Kailash, and upon the death of his father, the property devolved upon the plaintiff, his brother Shiv Kumar and Maan Singh and their mother. It was alleged that the defendants, who had no concern with the suit property, were attempting to dispossess the appellant-plaintiff and other co-sharers therefrom. Accordingly, the plaintiff filed the suit for permanent injunction.

3. The defendants contested the suit by denying the plaintiff's claim in toto. It was asserted that neither the plaintiff nor his ancestors had any concern with the suit property. It was further contended that the suit property, measuring 511 square yards 12 inches had been owned and possessed by the defendants and their ancestors for the last 150 years. On this basis, defendants claimed ownership as well as possession over the suit property and prayed for dismissal of the suit.

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

1. *Whether the plaintiff is owner in possession of the suit property ? OPP*
2. *Whether any compromise was effected before the village Panchayat regarding the suit property? OPD*
3. *Whether plaintiff has no locus-standi to file the suit? OPD*
4. *Whether suit is not maintainable in its present form? OPD*
5. *Whether plaintiff is estopped by his own acts and conduct to file the suit ? OPD*
6. *Whether plaintiff has concealed the material facts in the plaint? OPD*
7. *Relief.*

5. The suit property is stated to be situated within the Lal Dora of

village and, admittedly, there is no documentary evidence on record with regard to its title. In order to establish their respective claims of ownership as well as possession, both parties have relied upon oral evidence. On the one hand, the plaintiff, in support of his case, has examined PW-1 (the plaintiff himself), PW-2 Rup Ram, and PW-3 Shri Pat Ram. On the other hand, the defendants have examined DW-1 (defendant No. 1), DW-4 Shri Mahesh Kumar, and DW-5 Shri Ramotar. The defendants have further placed reliance upon the report of the Local Commissioner as well as the alleged admission made by the plaintiff before the Panchayat.

6. The learned Court of first instance, after appreciating the oral evidence led by both sides, returned the following findings: (i) that the suit property falls within 'Thola Jee Ram' of the village; (ii) that the defendants are residing in the village since the time of their grandfather, though the witnesses of the plaintiff deposed that the defendants had settled subsequently, whereas the ancestors of the plaintiff were the original inhabitants of the village; and (iii) that the suit property is surrounded by properties owned by other family members of the plaintiff, whereas defendant Chanderbhan is residing in the fields and his residential house in the village is situated at a distance from the suit property. It was also noticed that the defendant himself admitted that the 'Thola' of the plaintiff and that of the defendants are separate, and that the plaintiff belongs to Jee Ram Thola.

7. Apart from the above findings, the learned trial Court rejected the report of the Local Commissioner insofar as it opined that the defendants were in possession of the suit property. It was held that the mandate of the Local Commissioner was limited to report the existing physical condition of the

property, and he had no authority to render an opinion regarding possession and ownership of the suit property. Accordingly, such opinion was discarded as being beyond his jurisdiction.

8. The learned Court of first instance also disbelieved the alleged admission of the plaintiff regarding ownership and possession of the defendants over the suit property as contained in application Ex. PW-4/A. It was observed that a status quo order had been obtained by the plaintiff on 15.07.1993 directing the parties to maintain status quo with respect to the suit property. Thereafter, application was moved to the police on 16.07.1993 but the alleged compromise before the Panchayat was stated to have been executed on 17.07.1993, i.e., subsequent to the grant of injunction. In this background, the explanation furnished by the plaintiff, that he had gone to the police station for getting injunction order implemented, however, he was beaten and his signatures were obtained on blank papers, was found to be plausible. Consequently, Ex. PW-4/A, purportedly addressed to the Station House Officer, Police Station, Badhea and containing an admission that the plaintiff had given the suit property to the defendants, was rejected. On the basis of the aforesaid findings, the learned Court of first instance decreed the suit of the plaintiff.

9. The learned First Appellate Court also observed that there was no documentary evidence on record to establish ownership or possession of either party over the suit property. However, it was held that the evidence led by the defendants, asserting ownership and possession over the suit property for the last about 100 years, was more reliable. On that basis, learned First Appellate Court had concluded that the defendants were in possession of the suit property and, the property being situated within Lal Dora, its ownership would follow

possession.

10. The learned First Appellate Court further relied upon the existence of a temporary shed over the suit property as indicative of the defendants' possession. It was observed that the presence of the temporary structure, along with building material lying at the spot, supported the defendants' case. This aspect was found to be corroborated by the report of the Local Commissioner. It was also noticed that the plaintiff had never claimed the said temporary shed or the material at the site to be his own. Accordingly, the learned First Appellate Court held that the report of the Local Commissioner ought to have been duly considered and that the learned trial Court had erred in rejecting the same.

11. On consideration of the respective appreciation of evidence by the Courts below, and on re-appreciation of the entire material on record, this Court finds that the findings recorded by the learned Court of first instance reflect a correct and proper appreciation of the evidence led by the parties. Admittedly, in the present case, possession of the suit property is the determinative factor, which ultimately governs the outcome of present lis.

12. Both parties have primarily relied upon oral testimonies of their respective witnesses. The defendants, in addition thereto, have placed reliance upon the report of the Local Commissioner and on alleged admission of the plaintiff contained in Ex. DW-4/A. The learned Court of first instance, upon due appreciation of the oral as well as documentary evidence, concluded that the plaintiff was in possession of the suit property. In contrast, the learned First Appellate Court, on the same set of evidence, arrived at a contrary conclusion holding the defendants to be in possession.

13. The reasoning assigned by the learned Court of first instance

appears to be sound and in consonance with the evidence on record. In cases of this nature, oral evidence has to be appreciated in the totality of surrounding circumstances. The plaintiff has been able to establish that his family were the original inhabitants of the village, whereas the defendants' ancestors had settled subsequently. It is also an admitted position that the suit property falls within the 'Thola' of the plaintiff, while the defendants belong to a different Thola. A 'Thola' denotes a localized subdivision or hamlet within the Abadi Deh, generally representing a cluster of families residing together on the basis of lineage or community.

14. The fact that the suit property is situated within the plaintiff's Thola, coupled with the admitted position that the defendants' Thola is separate and that their residential house in the village is located at a distance from the suit property, goes against the defendants' claim of possession. It is also evident from the record that the suit property is surrounded by properties owned by the close relatives and extended family members of the plaintiff. The learned First Appellate Court has erred in discarding this material aspect merely on the ground that one Ved Parkash, who also owns adjoining land, does not belong to the plaintiff's family. The presence of an outsider in the vicinity does not dilute the otherwise consistent evidence establishing that the suit property lies within the cluster of the plaintiff's family holdings.

15. Significantly, the defendants have failed to furnish any plausible explanation for their alleged occupation of land situated within the plaintiff's Thola, particularly when they themselves admit that their Thola is distinct. This circumstance, in fact, weakens the defendants' case rather than supporting it.

16. The learned Court of first instance has also rightly excluded the

evidentiary value of the Local Commissioner's report insofar as it expresses an opinion on possession. The Local Commissioner was only required to report the physical status of the property at the time of inspection and had no mandate to determine possession or ownership of any person over the property. Consequently, the reliance placed by the learned First Appellate Court on such opinion is misplaced and legally unsustainable. Similarly, Ex. DW-4/A, purportedly containing admission by the plaintiff, does not inspire confidence. It is an admitted fact that a status quo order was passed in favour of the plaintiff on 15.07.1993. In such circumstances, there was no plausible reason for the plaintiff to concede the defendants' claim within two days thereof before police and continue to contest his suit. The explanation furnished by the plaintiff that he on his visit to the police station was subjected to coercion and his signatures were obtained on blank papers, appears credible in the facts and circumstances of the case and has been rightly accepted by the learned Court of first instance. The learned First Appellate Court, thus, erred in treating Ex. DW-4/A as a voluntary and reliable admission.

17. The rejection of the Local Commissioner's report (to the extent it opines on possession) and Ex. DW-4/A by the learned Court of first instance is, therefore, justified. On a cumulative appreciation of the oral evidence led by both parties, this Court concurs with the finding that the appellant-plaintiff has successfully established his possession over the suit property. Mere existence of a temporary shed or presence of building material during the pendency of the suit over an open piece of land is insufficient to establish possession of the defendants.

18. Accordingly, the present appeal is allowed. The judgment and

decree dated 04.09.1997 passed by the learned First Appellate Court is set aside and judgment and decree dated 09.01.1997 passed by the learned Court of first instance is restored and affirmed.

19. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

17.04.2026		(PARMOD GOYAL)
manoj		JUDGE
	Whether speaking/reasoned	Yes
	Whether reportable	Yes/No