



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

**RSA-2320-2023 (O&M)
Date of Decision:19.05.2026**

RADHEY SHYAM

.....Appellant

VERSUS

KRISHAN SINGH(SINCE DECEASED) THROUGH HIS LRS AND OTHERS

.....Respondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. R.N. Lohan, Advocate and
Ms. Shivani Mishra, Advocate
for the appellant.

Yashvir Singh Rathor, J. (Oral)

1. This Regular Second Appeal is directed against the judgment and decree dated 09.01.2023 passed by the Court of Additional District Judge, Rewari, vide which the appeal filed by the appellant/proforma respondent No.12 against the judgment and decree dated 30.11.2016 passed by learned Civil Judge (Junior Division), Rewari in Civil Suit No.56321 of 2013, whereby the suit for permanent injunction filed by the plaintiffs was dismissed, has been dismissed.

2. As per version of appellant/proforma respondent No.12, parties to the suit are owners in possession of agricultural land detailed in para No.1 of the plaint as per jamabandi 2004-2005. Plaintiffs have moved an application for partition of the joint land before revenue authorities. Defendants are raising an



illegal colony over the joint land by selling small plots for residential purposes without obtaining any permission from Town and Country Planning Department. They have no right to change nature of the suit property without getting the same partitioned. Refusal of the defendants not to do so necessitated the present suit. A decree for permanent injunction was sought restraining defendants from changing the nature of the suit property and carving out plots and raising any construction over the same unless and until the joint holding is partitioned.

3. Defendants in their written statement have taken a plea that plaintiffs and proforma defendants have executed sale deeds No.4858 dated 02.01.2012, 4880 dated 05.01.2012, 4871 dated 04.01.2021, 5206 dated 16.01.2012 and 42290 dated 28.11.2011 in respect of the suit property. In sale deed No.4858, plaintiffs No.1, 4 and 6 and proforma defendants No.12, 15 and 16 have agreed and undertaken that they have sold 12 kanal 8 marla land by way of this sale deed and have also left a 20 feet wide rasta/passage and that they will never sell or close the said rasta. Defendants No.13 and 14 and plaintiff No.5 in sale deeds No.4880, 4871 and 5206 have also given the same undertaking and as such, they have no right in the remaining land. Proforma defendants No.10 and 11 in sale deed No.4290 have also given an undertaking that they have left 9 marla land for the purpose of rasta/passage to the land measuring 3 kanal 7 marla sold by way of said sale deed and they will not claim any right in the said land. It is further submitted that plaintiffs and proforma defendants had $\frac{3}{4}$ share in the entire land measuring 30 kanal 9 marla, which comes out to 22 kanal 17 marla. They have sold 19 kanal 19 marlas out of the same and land measuring 4 kanal 14 marla has



been left for 20 feet rasta as is clear from the site plan. It is further submitted that defendants No.1, 8 and 9 have further sold out the land to different persons vide different sale deeds as mentioned in the written statement and mutations have been sanctioned and purchasers have also raised construction on their respective plots without any objection on the part of plaintiffs and proforma defendants. Plaintiffs thus have no right, title or interest in the property in dispute.

4. A separate written statement has also been filed by defendants No.3 and 4 stating that they have become co-owners in possession of the suit property comprised in Khewat No.368, Khatoni No.412, Killa No.4, measuring 30 kanals and 7 marlas, to the extent of 7/669 share vide registered sale deeds No.4443 and 4444 dated 08.12.2011 and mutations No.11134 and 11135 have been sanctioned. It is further submitted that they are bonafide purchasers of the aforesaid land, which was purchased from Kishan Singh son of Mahabir Singh and that they have constructed their pucca houses thereon. It is also submitted that the possession of defendants No.3 and 4 has continued since the purchase of the suit property without any interference from anyone and therefore, the plaintiffs have no right to challenge the same.

5. Defendant No.6 in his written statement has submitted that he is owner in possession of 5/609 share in the disputed property comprised in Khewat No.368, Khatoni No.412 vide sale deed bearing Vasika No.4752 dated 28.12.2011. In this regard, mutation No.11172 has been sanctioned. It is further submitted that he is a bonafide purchaser for valuable consideration and therefore, the plaintiffs have no right or claim over the same.



6. Defendant No.7 in his written statement has submitted that he is owner in possession of 5/609 share in the disputed property comprised in Khewat No.368, Khatoni No.412 vide sale deed bearing Vasika No.4677 dated 19.12.2011. In this regard, mutation No.11179 has been sanctioned. It is further submitted that he is a bonafide purchaser for valuable consideration and therefore, the plaintiffs have no right or claim over the same. The remaining averments made in the plaint were denied.

7. From the pleading of the parties, following issues were framed on 23.05.2014:-

- “1. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for ?OPP
2. Whether the plaintiff is entitled to a decree of mandatory injunction as prayed for ?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ?OPD
4. Whether the suit of the plaintiff has no cause of action to file the present suit?OPD
5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct?OPD
6. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD
7. Whether the plaintiff has no locus standi to file the present suit and suit of the plaintiff is barred under order 7 Rule 11 CPC? OPD
8. Whether the suit of the plaintiff is barred by limitation?OPD
9. Relief.”



8. Thereafter, the parties led evidence in support of their case.
9. After hearing the parties and on going through the material on file, the trial Court vide judgment and decree dated 30.11.2016 has dismissed the suit of the plaintiffs.
10. Feeling aggrieved, appellant/plaintiff No.6 and appellant-proforma respondent No.12 have filed an appeal which has also been dismissed by the Court of Additional District Judge, Rewari vide judgment and decree dated 09.01.2023.
11. Feeling aggrieved, the present regular second appeal has been instituted. Learned counsel for appellant has been heard and the material on file has been perused.
12. Learned counsel for the appellant argued that the findings arrived at by both the Courts below are based on conjectures and surmises and evidence has not been appreciated in the correct perspective. Learned counsel further contended that no rasta was left out by the plaintiffs and they are still the owners of the same and since joint holding has not been partitioned by metes and bounds, defendants have no right to sell the plots out of joint holding and to raise construction over the same. The impugned judgment be thus set aside and suit be decreed.
13. However, I do not find any force in the contentions raised by learned counsel for the appellant. Both the Courts have concurrently arrived at a finding that the plaintiffs as well as defendants have sold their share in the suit property to different persons by way of plots. Plaintiffs and proforma defendants owned $\frac{3}{4}$ share in the total land measuring 30 kanal 9 marla and their share comes out to 22



kanal 17 marla. Out of their total share of 22 kanal 17 marla, they have sold 19 kanal 19 marla land and remaining land measuring 4 kanal 14 marla has been left out to be used as a 20 feet wide rasta/passage to enable the buyers to use the same as a passage for their ingress and egress. Plaintiffs had concealed these facts in the plaint that they have sold their share by way of plots and had also left some land for 20 feet wide rasta and they have thus not come to the court clean hands. It is well settled that grant of injunction is an equitable and discretionary relief and one who seeks equity must do equity and should come to the Court with clean hands and since plaintiffs have concealed the fact that plaintiffs and proforma defendants have themselves sold the land by way of plots, they are not entitled to seek discretionary relief of injunction. Rather, material on file shows that they have turned greedy on account of the fact that land left out for the purpose of rasta may still have been recorded in their ownership in the revenue record, whereas in the sale deeds executed by them, this land has been left out to be used as passage/rasta for the purchasers of the plots. Once there is a recital in the sale deeds that land has been left out to be used as a rasta, plaintiffs cannot allege that they still have a share or are co-sharers in the joint holding. Learned trial Court as well as learned First Appellate Court have thus appreciated the facts of the case and evidence on file in the correct perspective. As such, the findings arrived at by both the Courts below thus do not suffer from any infirmity or illegality much less perversity or error in law or procedure and there is thus no reason to take a contrary view and to interfere with the concurrent findings of facts recorded by both the Courts below.



14. It is well settled that in Regular Second Appeal, this Court has limited jurisdiction to interfere in the concurrent findings of facts returned by trial Court and First Appellate Court. Hon'ble Supreme Court in Law Finder Doc Id # 2034559 - *M/s. Shivali Enterprises v. Godawari (Deceased) (SC)*; has held as under:-

*“14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."

(Emphasis added)

15. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees passed by the learned Trial Court and the Appellate Court and the present Regular Second Appeal is hereby dismissed. No order as to costs.



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

(YASHVIR SINGH RATHOR)
JUDGE

19.05.2026
Priyanka Thakur

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No