



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

RSA-3070-2000 (O&M)

Reserved on :-30.04.2026

Date of Pronouncement:-06.05.2026

Uploaded on:- 07.05.2026

Devi Sahai S.D. Education Board, Jalandhar

... Appellant

Versus

Municipal Corporation, Jalandhar

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. M.L. Sarin, Senior Advocate with
Ms. Himani Sarin, Advocate for the appellant.

Mr. Harsh Aggarwal, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter to be referred as 'RSA' for short) is directed against the judgment and decree dated 06.01.2000 rendered by the learned Additional District Judge, Jalandhar. By virtue of the impugned judgment, the lower appellate court reversed the findings of the learned Additional Civil Judge (Senior Division), Jalandhar, dated 18.05.1998, thereby allowing the appeal and dismissing the suit originally instituted by the appellant-plaintiff.
2. The appellant-plaintiff sought a decree of permanent injunction to restrain the defendant-Corporation from interfering with its peaceful possession of the suit property, specifically the Janak Joshi S.D.

Nursery Teachers' Training Institute, and from executing any demolition. The plaintiff, a registered society, predicated its claim on the assertion that the subject land was leased from one Hari Kishan Joshi, a co-sharer in possession of the *Shamlat Deh Hasab Rasad Khewat*. It was contended that following the delivery of possession, the society constructed a school building. While the defendant-Corporation issued a notice for construction sans a sanctioned plan, the plaintiff submitted a site plan for post-facto approval and deposited the requisite fees. The plaintiff further alleged that the threatened demolition was not a bona fide exercise of statutory power but was motivated by underlying management disputes between the parties currently pending adjudication.

3. The defendant-Corporation contested the suit, categorically refuting the ownership and possessory title of Hari Kishan Joshi over the *Shamlat Deh* land, as well as the validity of the alleged lease agreement. The respondent contended that the construction was inherently illegal, having been raised in flagrant violation of building bylaws without prior sanction. Asserting its own title over the land, the Corporation characterized the plaintiff's status as that of a mere trespasser and maintained that the statutory notices issued were legally sound and enforceable.

4. Subsequently, the appellant-plaintiff filed a replication, categorically traversing the preliminary objections and factual denials interposed by the defendant-respondent in its written statement. In doing so, the plaintiff unequivocally reaffirmed the foundational averments of the plaint, maintaining the consistency of its claims. Upon a meticulous

scrutiny of the pleadings and a judicious consideration of the rival contentions, the Court proceeded to crystallize the essential matters in controversy. To ensure a systematic and legally coherent adjudication of the dispute, the Court settled the following issues for determination:-

1. Whether Hari Kishan Joshi was the owner in possession of the land in question as a co-sharer ? OPP
 2. Whether the plaintiff is the owner in possession of the suit land as alleged ?OPP
 3. Whether the plaintiff is entitled to the relief of permanent injunction prayed for ?OPP
 4. Relief.
5. Upon the conclusion of the trial, the learned Trial Court decreed the suit, restraining the defendant-Corporation from interfering with the plaintiff's possession or demolishing any portion of the structure, save in accordance with the due process of law. However, on appeal by the defendant-Corporation, the learned First Appellate Court reversed the said findings and set aside the judgment and decree of the Trial Court. Aggrieved by this reversal, the appellant-plaintiff instituted the present Regular Second Appeal, which was admitted for hearing on 10.01.2001. Following the requisitioning of the lower court records, the respondent entered an appearance through counsel.
6. I have heard the learned counsel for the parties at length and have bestowed anxious and thoughtful consideration upon their respective submissions, while meticulously evaluating the pleadings, the evidentiary material on record, and the divergent findings returned by the Courts below.

7. Regarding the scope of this second appeal, it is a settled legal proposition that in the States of Punjab and Haryana, such appeals are governed by Section 41 of the Punjab Courts Act, 1918, rather than the more restrictive Section 100 of the Code of Civil Procedure. This position has been firmly established by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through LRs and others v. Chandrika and others, (2016) 6 SCC 157***, and subsequently reaffirmed in ***Kirodi (since deceased) through his LR v. Ram Parkash and others, (2019) 11 SCC 317***, and ***Satender and others v. Saroj and others, 2022(12) Scale 92***. Consequently, in light of these precedents, the framing of a formal question of law is not a prerequisite for adjudication.

8. The learned counsel for the appellant-plaintiff vehemently contended that the First Appellate Court set aside a well-reasoned decree based on mere surmises and conjectures rather than a proper appreciation of evidence. It was argued that the Trial Court correctly identified an unexplained mutation in the revenue records; specifically, the entry in the *Jamabandi* was altered in favor of the Corporation without any substantiating legal basis to replace the prior entry of Hari Kishan Joshi, the plaintiff's predecessor-in-interest. The appellant further asserts that the First Appellate Court erroneously relied upon *Jamabandi* Ex.DW2/1 (1994-95) to declare the Corporation as the owner, while ignoring the Corporation's own admission regarding the existence of the construction. Crucially, the appellant maintains that even a party in settled possession as a trespasser is entitled to protection against forcible dispossession. It is submitted that the Trial Court's decree was limited in scope to injunctive

relief, and the First Appellate Court exceeded its mandate by recording adverse findings on ownership and the admissibility of the lease deed.

9. Per contra, the learned counsel for the respondent-Corporation argued that the First Appellate Court's findings suffer from no legal infirmity. It was contended that the suit property vests in the Municipal Corporation as *Shamlat Deh* by operation of law, a fact substantiated by *Jamabandi* Ex.DW2/1. The respondent maintained that the Corporation is legally empowered to summarily remove encroachments by trespassers, and that construction raised in flagrant violation of the Punjab Municipal Corporation Act warrants no judicial protection.

10. In its adjudication, the learned Trial Court, referring to *Jamabandi* Ex.PX (1979-80), found that Hari Kishan Joshi held the land as a co-sharer and that the plaintiff was in possession as a lessee under agreement Ex.PW2/A. The Trial Court noted that while the Corporation produced a later *Jamabandi* (Ex.DW2/1) claiming ownership, it failed to demonstrate the legal mechanism by which the ownership column was changed from the previous entry of Hari Kishan Joshi (*Gair Marusi*). Conversely, the First Appellate Court, in paragraph 11 of its judgment, held that the vesting of *Shamlat Deh* and *Nazool* land in Municipalities occurs via government mandate, thereby shifting the onus to the plaintiff to prove a valid title. The Appellate Court further dismissed the lease deed as legally inadmissible due to lack of registration and non-examination of attesting witnesses, concluding that there was no evidence of the plaintiff ever taking possession. Notably, the First Appellate Court failed to address the Trial Court's pivotal finding that the Corporation bore the burden of

proving that the alteration in revenue entries was legally effected. In this context, this Court in ***Paramjit Singh v. Jora Singh, 1997 (2) PLJ***, held as follows:-

In a case where earlier revenue entries are changed in the later revenue entries and the change is effected without any mutation and there is no order of the revenue authorities for changing the entries, is for the defendants to prove as to how the change in the entry came to be made in absence of any justification, presumption in favour of later entries would stand rebutted by the fact that alteration in the later entries was made unauthorisedly in this regard, reference be made to recent judgment of the Apex Court in ***Mansu v Shadi Ram, 1996 PLJ 215***, wherein it has been held that there is a presumption in favour of continuity of possession if it is proved that a person was a tenant over the suit land, he would be presumed to have continued thereafter unless by some cogent evidence or overt-act it is proved that he abandoned the tenancy or was otherwise evicted in accordance with law.

10.1. In the instant case, the appellant-plaintiff has successfully adduced *Jamabandi* for the year 1979-80 (Ex.PX), which explicitly records the suit land as *Shamlat Deh Hasab Rasad Khewat* and establishes the possessory title of Hari Kishan Joshi, describing the nature of the property as *Gair Mumkin Karkhana*. While the defendant-Corporation relied upon a subsequent *Jamabandi* (Ex.DW2/1) to assert ownership, the record is conspicuously silent regarding the legal mechanism by which this mutation was effected or how possession was purportedly divested from Hari Kishan Joshi or the plaintiff. The learned First Appellate Court observed that such a change was allegedly based on a Government order; however, it is a fundamental principle of jurisprudence that judicial

findings must be predicated upon substantiated evidence rather than mere allegations. By placing reliance on an unproven administrative directive to validate the alteration of revenue entries, the First Appellate Court committed a reversible error.

10.2. Furthermore, given the established fact that Hari Kishan Joshi held possession as a co-owner and that an industrial structure (*Karkhana*) existed on-site prior to the plaintiff's induction via an agreement, the plaintiff's possessory interest is well-founded. Even if the lease agreement were deemed technically deficient in proof, the Corporation has not specifically denied the plaintiff's settled possession or the factum of construction. It is a settled proposition of law that even a party in settled possession including a trespasser is entitled to judicial protection against forcible dispossession. In this context, since the appellant-plaintiff was inducted into possession by a recorded co-owner, their status cannot, by any stretch of imagination, be characterized as that of a mere trespasser. Should the suit land have subsequently vested in the Corporation by operation of law, the Corporation is nonetheless obligated to recover possession through the due process of law rather than through high-handed or summary eviction. This principle was unequivocally affirmed by the Hon'ble Apex Court in *Mohan Lal v. State of Punjab, 1971 PLJ 339*, wherein it was held:-

“Under our jurisprudence even an unauthorized occupant can be evicted only in the manner authorized by law. This is essence of rule of law.”

10.3. In view of the totality of the facts, circumstances, and the evidence adduced on record, the findings returned by the learned First

Appellate Court whereby the well-reasoned judgment of the learned Civil Judge was disturbed is legally unsustainable and manifestly perverse. Said findings are the result of a patent misreading and misappreciation of the evidentiary material, particularly regarding the unexplained mutation of revenue entries and the established settled possession of the appellant. Consequently, the present appeal is **allowed**; the judgment and decree passed by the learned First Appellate Court is hereby set aside, and the judgment and decree of the learned Trial Court is restored in their entirety.

11. Upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, stand disposed of by necessary implication. In light of the substantive conclusions reached herein, no separate or independent orders are required in respect of such applications, as their determination has rendered them wholly infructuous and academic.

06.05.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No