



RSA No. 1456 of 1999 (O&amp;M) -1-

**101 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH****RSA No. 1456 of 1999 (O&M)  
RESERVED ON:- 27.03.2026  
DATE OF DECISION:- 01.04.2026  
UPLOADED ON:- 02.04.2026****JARNAIL SINGH****.....APPELLANT****Vs.****AVTAR SINGH (SINCE DECEASED) THROUGH LRS AND  
ANOTHER****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL**

Present: Mr. Mandeep Singh Bedi, Senior Advocate, with  
Mr. Abhishek Thakur, Advocate,  
for the appellant.

Mr. Kuldip Sanwal, Advocate,  
for the respondent.

**\*\*\*\*\*****AMARINDER SINGH GREWAL, J.****PRAYER**

1. The present Regular Second Appeal has been filed by the appellant-plaintiff for setting aside the judgment and decree dated 06.04.1999 passed by the learned Additional District Judge, Gurdaspur (for short 'the First Appellate Court'), whereby the appeal filed by the respondents-defendants was allowed and the judgment and decree dated 19.11.1997 passed by the learned Additional Civil Judge (Senior Division), Gurdaspur, (for short 'the trial Court') decreeing the suit for permanent injunction in favour of the appellant-plaintiff was set aside.



1.1 For the sake of convenience, the parties shall be referred to in terms of their status before the learned trial Court.

### **FACTS**

2. Briefly stated, the plaintiff instituted a suit for permanent injunction on 25.01.1995, asserting that he had purchased the suit land measuring 5 '*Kanals*' 19 '*Marlas*' vide sale deed dated 30.05.1994 from Janak Singh and was in possession thereof as owner. It was further pleaded that mutation on the basis of the said sale deed had also been sanctioned in his favour and that the defendants, having no right, title or interest, were threatening to dispossess him forcibly.

2.1 The defendants contested the suit by filing a written statement raising a preliminary objection that an earlier suit filed by Smt. Sita Devi, predecessor-in-interest of the defendants, was already pending with regard to the same property. On merits, it was specifically pleaded that the land in question is joint and unpartitioned and that the defendants are in possession thereof, whereas the plaintiff is not in possession.

2.2 As per the material on record, it also emerges that the revenue entries ('*Jamabandi*' and '*Khasra*' '*Girdawari*') reflect the possession of Janak Singh on behalf of Smt. Sita Devi, thereby indicating the joint nature of the property and absence of exclusive possession. It further transpires that the correction in '*Khasra*' '*Girdawari*' relied upon by the plaintiff pertains to a period subsequent to the filing of the suit.

2.3 On the basis of the pleadings, four issues were framed, including 'Relief.' and evidence was led by both the parties. The learned trial Court decreed the suit of the plaintiff; however, the learned First



Appellate Court reversed the said findings and dismissed the suit on the ground that the plaintiff failed to prove his possession over the suit property on the date of institution of the suit. Accordingly, aggrieved against the judgment and decree passed by the learned First Appellate Court, the present Regular Second Appeal has been filed before this Court.

### **ARGUMENTS ON BEHALF OF THE APPELLANT-PLAINTIFF**

3. Learned Senior Counsel for the appellant submits that the learned First Appellate Court has erred in reversing the well-reasoned judgment of the trial Court.

3.1 It is argued that the plaintiff purchased the land through a valid sale deed dated 30.05.1994 and the mutation was sanctioned in his favour, thereby establishing his title and possession.

3.2 It is further contended that the '*Jamabandi*' and '*Khasra*' '*Girdawari*' entries (Ex. P-1 & P-2) support the possession of the plaintiff and his vendor, and that the vendor was in cultivating possession prior to the sale.

3.3 It is argued that once the parties are co-sharers, possession of one is possession of all, and therefore the entry showing possession "on behalf of Smt. Sita Devi" is illegal and has been wrongly relied upon by the First Appellate Court.

3.4 Learned Senior Counsel further submits that the '*Khasra*' '*Girdawari*' was subsequently corrected in favour of the plaintiff, which establishes his possession, and such correction could not have been ignored merely on the ground that it was made during the pendency of the suit.



3.5 Reliance has been placed on judgment of this Court passed in **Satish Chander Sethi** vs. **Chuni Lal Sunder Lal** [(1996 (1) RRR 143)] to contend that a co-sharer in exclusive possession is entitled to protect such possession even before partition.

#### **ARGUMENTS ON BEHALF OF THE RESPONDENTS DEFENDANTS**

4. *Per contra*, learned counsel for the respondents submits that the plaintiff has failed to prove his actual possession over the suit property on the date of filing of the suit.

4.1 It is argued that the land is admittedly joint and no partition has taken place, and therefore the plaintiff cannot claim exclusive possession over a specific portion of land.

4.2 It is further contended that in the '*Jamabandi*' for the year 1992-93, Smt. Sita Devi is shown to be in possession through Janak Singh, which demolishes the claim of exclusive possession of the plaintiff.

4.3 It is argued that the plea regarding family partition was not taken in the plaint and has been introduced later in evidence, which cannot be read in evidence.

4.4 Learned counsel further submits that the correction in '*Khasra*' '*Girdawari*' was effected during the pendency of the suit and, therefore, cannot establish possession on the date of institution of the suit.

4.5 It is also contended that the plaintiff has failed to prove any real threat of dispossession.

4.6 Reliance is placed upon various judgments, including **Bhartu** vs. **Ram Sarup**, 1981 PLJ 204 (FB), **M/s New Bharat Chemical Industries**



vs. **Om Parkash**, 1997 (2) PLJ 555 and **Balkrishna Dattatraya Galande**  
vs. **Balkrishna Rambharose Gupta**, (2020) 19 SCC 119, to contend that:

- A co-sharer cannot seek injunction against another co-sharer in joint property;
- Sale of specific portion in joint land amounts only to transfer of share;
- Most importantly, actual possession on the date of suit is mandatory for grant of injunction.

### **FINDINGS**

5. I have heard learned counsel for the parties and perused the record.

6. The primary issue that arises for consideration is whether the plaintiff has been able to establish his actual possession over the suit property on the date of institution of the suit.

7. It is a settled proposition of law that in a suit for permanent injunction, the plaintiff must establish his actual and lawful possession over the suit property on the date of filing of the suit. The Hon'ble Supreme Court in **Balkrishna Dattatraya Galande** vs. **Balkrishna Rambharose Gupta**, (2020) 19 SCC 119, has categorically held that an injunction restraining disturbance of possession cannot be granted unless the plaintiff proves that he was in actual possession of the suit property on the date of filing of the suit.

8. In the present case, it is not disputed that Smt. Sita Devi and Janak Singh, the vendor of the plaintiff, were co-sharers in the suit land and



no partition had taken place. In such circumstances, any sale by a co-sharer would only amount to transfer of his undivided share and would not confer exclusive possession over any specific portion of the suit land.

9. The contention raised on behalf of the appellant that possession of one co-sharer amounts to possession of all co-sharers does not advance his case in a suit for injunction, where actual physical possession is required to be established and the same could not be established.

10. Upon appreciation of the record, it is found that the plaintiff failed to produce any documentary evidence to prove his possession over the suit land on the date of institution of the suit, i.e. 25.01.1995. Although reliance was placed upon order Ex.P4 dated 25.06.1997, passed by the Assistant Collector Grade-II, Gurdaspur, whereby the '*Khasra*' '*Girdawari*' was ordered to be corrected in favour of the plaintiff since '*Rabi*' 1997, the said order pertains to a period subsequent to the institution of the suit and does not establish his possession at the relevant time. It is found that the alleged vendor was not in exclusive possession of the land, the suit land being joint amongst co-sharers, and any sale of a specific portion out of such joint holding would amount only to a sale of the share of the co-sharer. Accordingly, it is concluded that the plaintiff failed to prove his cultivating possession over the suit land at the time of filing of the suit and is, therefore, not entitled to the decree of injunction.

11. The learned First Appellate Court has rightly appreciated the evidence and recorded a finding that the plaintiff was not in possession of the suit property on the date of filing of the suit. The said finding does not



suffer from any perversity or illegality warranting interference by this Court.

12. Accordingly, the judgment and decree passed by the learned First Appellate Court are hereby affirmed/upheld.

13. In view of the above, the present Regular Second Appeal is dismissed, being devoid of merit.

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

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| <b>APRIL 01, 2026</b> | <b>(AMARINDER SINGH GREWAL)</b> |
| <b>nitin</b>          | <b>JUDGE</b>                    |
| Whether Speaking      | Yes                             |
| Whether Reportable    | No                              |