

2026:PHHC:066979



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

RSA-2309-2023 (O&M)
Date of Decision: 28.04.2026

Suresh (since deceased) through his LR and others

...Appellants

Versus

Bhup Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Ketan Antil, Advocate, for the appellants.

VIKRAM AGGARWAL, J (Oral)

This is plaintiffs' appeal against the judgment and decree dated 03.08.2022, passed by the Court of Additional District Judge, Sonapat, dismissing the appeal against the judgment and decree dated 09.10.2017 passed by the Court of Additional Civil Judge (Senior Division), Kharkhoda, vide which the suit filed by the plaintiffs, had been dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs filed a suit for permanent injunction in respect of the land shown by letters 'ABCD' in the site plan attached with the plaint and fully described in para No.3 of the plaint, situated in village Khurampar, Tehsil Kharkhoda, District

Sonepat (hereinafter referred to as 'the suit property'). It was claimed that there were two Pannas namely Saheb Ram and Ram Sukh and three Tholas in the aforesaid village. The suit property was within the phirni of the said village. It was further claimed that the parties to the suit belonged to different Tholas and the suit property belonged to the Thola of the plaintiffs and that they had been in possession of the same since the time of habitation of the village and that the defendants had no concern with the suit property nor they hailed from the Thola of the plaintiffs.

3.1 It was further asserted that having been in continuous possession of the suit property, the plaintiffs used to put their kurdis, cow dung and other articles over the suit property and further used to tether their cattle on the same. It was further the case of the plaintiffs that the defendants had filed an application to the SHO, Kharkhoda with false averments, whereupon proceedings under Sections 107/151 Cr.P.C. were initiated. It was averred that the defendants had been threatening to dispossess the plaintiffs from the suit property and repeated requests made by them, did not yield any result.

4. The defendants contested the suit by filing a written statement taking certain preliminary objections regarding maintainability, cause of action, *locus-standi* and the plaintiffs having suppressed the true and material facts from the Court. On merits, the factum of the parties belonging to different Tholas was admitted. However, it was asserted that the plaintiffs

belonged to Jagram Thola of Saheb Ram Panna, whereas the defendants belonged to Nihal Thola of Saheb Ram Panna. The factum of continuous possession of the plaintiffs over the suit property, was denied. Instead, it was asserted that the defendants had been in possession of the suit property and had also constructed a boundary wall over the same on 22.02.2013. It was further averred that plaintiff No.1 had made a false complaint to the SHO, Kharkhoda, whereupon a Panchayat was convened on 25.03.2013, wherein it was resolved that the plaintiffs had no concern with the suit land. The other averments of the plaint were denied.

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

1. **Whether the plaintiff is entitled for a decree for permanent injunction? OPP**
2. **Whether the suit filed by the plaintiff is not legally maintainable in the present form? OPD**
3. **Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD**
4. **Relief.**

6. Parties led their respective evidence.

7. The trial Court, vide judgment and decree dated 09.10.2017 dismissed the suit filed by the plaintiffs. The appeal filed by the plaintiffs against the said decision was also dismissed by the first Appellate Court vide judgment and decree dated 03.08.2022. Still aggrieved, the plaintiffs have filed the instant appeal.

8. I have heard learned counsel for the appellants and have also perused the record.

9. Learned counsel appearing for the appellants argues that both Courts erred in not appreciating the evidence on record inasmuch as in their testimony, PW-1 Suresh, PW-2 Raj Roop and PW-3 Partap Singh, deposed that the suit property had been in possession of the plaintiffs and such fact had also been admitted by the witnesses of the defendants.

9.1 It is further argued that both Courts further erred in holding that the plaintiffs had not been able to discharge the burden to prove their possession over the suit property, whereas, in view of the cogent and convincing evidence on record, it stood proved that the plaintiffs had been in continuous and uninterrupted possession of the suit property since the time of their forefathers. Learned counsel submits that both Courts erred in non-suiting the plaintiffs on the ground that they had not been able to prove as to which Thola they belonged to, whereas the defendants themselves stated in the written statement that the plaintiffs belonged to Jagram Thola.

10. I have considered the submissions made by learned counsel for the appellants, but find the same to be devoid of merit.

11. Both Courts returned a finding that the plaintiffs did not disclose which particular Panna and Thola, they belonged to. No doubt, the defendants stated that the plaintiffs belonged to Jagram Thola. However, the witnesses examined by the plaintiffs could not depose as regards the said fact. It has to be borne in

mind that it was for the plaintiffs to prove their own case by proving that they were in possession of the suit property. Rather, on the basis of document Exhibit D.1, it was established that the suit property belonged to 60 families of Nihal Thola. It was found that the plaintiffs could not prove their possession over the suit property and merely because they were tethering cattle and storing certain articles over the suit property, did not prove that the plaintiffs had been in possession of the same.

12. It was also found that the testimony of the witnesses of the defendants in respect of the possession of the plaintiffs over the suit property, being contradictory in nature, could not be relied upon, especially when the plaintiffs were required to prove the same by leading cogent and convincing evidence. The relevant part of the judgment of the first Appellate Court, reads as under:-

“13.....Even if the version of the plaintiffs is believed, it is observed that the burden of proving their case was on the plaintiffs and they cannot take the benefit of shortcomings of the case of defendants. They have to stand on their own legs and have to prove their case by leading cogent evidence. However, if the case of the plaintiffs is perused minutely, it comes out that they had not even disclosed as to in which Thola the suit property is situated. They themselves are not clear as to which particular Panna and Thola they belong. The plaintiffs

have moved an application for seeking information about the Panna and Thola existing in village Khurampur and it contains the report that there are two Pannas namely Saheb Ram and Ram Sarup. This report also does not help the case of the plaintiffs as it does not prove as to from which Panna the plaintiffs belong. When the witnesses of plaintiffs had appeared, they themselves could not disclose as to from which Panna they belong. Thus, from the evidence of plaintiffs, it could not be ascertained as to in which Panna they are the proprietors. They have admitted in their evidence that 60 families of proprietors of Nihal Panna had raised construction of boundary wall over the suit property, but as the plaintiffs have failed to prove on the case file that they belong to Nihal Panna, their possession over the suit property is not proved. Even the witness of plaintiffs namely PW3 Partap Singh has admitted that it is the defendants who had raised construction of boundary wall over the suit property. Thus the plaintiffs could not prove their possession over the suit property. Even otherwise, by merely tethering their cattle and storing kurdi and bitora over a vacant plot,

it does not prove that plaintiffs are in possession of the said plot.....”

13. Both Courts recorded concurrent findings of facts on the basis of evidence on record. It could not be pointed out that any evidence has been misread or not taken into consideration. Thus, I do not find any illegality in the said findings, which may warrant interference by this Court in the instant Regular Second Appeal.

14. For the reasons aforementioned, I do not find any merit in the present appeal and the same is, accordingly, dismissed.

15. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

28.04.2026
ds

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