



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

RSA-1893-2026 (O&M)
Date of Decision:18.05.2026

GURDEV SINGH AND OTHERS

...Appellants

Versus

JASVINDER SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Kamal Chaudhary, Advocate
for the appellants.

PARMOD GOYAL, J. (ORAL)

Present regular second appeal has been preferred by appellants-defendant Nos.1, 2 and 4 being aggrieved by judgment and decree dated 21.11.2022 passed by learned Additional Civil Judge (Senior Division), Panchkula vide which suit for possession, recovery and permanent injunction preferred by respondents-plaintiffs was decreed and also by judgment and decree dated 07.03.2026 passed by learned Additional District Judge, Panchkula whereby first appeal preferred by appellants-defendants was dismissed.

2. Respondents-plaintiffs in their suit for possession, recovery and permanent injunction claimed that they are owners of 15 marlas land situated in abadi deh of Village Majri, Tehsil and District, Panchkula as maternal grand-father of respondents-plaintiffs was proprietor of the village and the property owned by their maternal grand-father Mangal Singh after his death was succeeded by his only daughter and mother of respondents-plaintiffs,

Amarjit Kaur, and from Amarjit Kaur, respondents-plaintiffs have succeeded the suit property.

3. It is the claim of respondents-plaintiffs that by taking benefit of the absence of Amarjit Kaur, the sole successor of Mangal Singh, the appellants-defendants had encroached upon suit property and when Amarjit Kaur along with respondents-plaintiffs came back from Delhi in the year 2008, she came to know about the encroachment and approached the Civil Court. Now after first round of litigation wherein appellants were found trespassers, they have sought possession of the suit land which they have been found to be entitled to recover in due course of law.

4. Appellants-defendant Nos.1, 2 and 4 had opposed the suit by taking number of preliminary objections as regards to maintainability etc. On merits, it was asserted that appellants-defendant Nos.1, 2 and 4 had preferred Civil Suit No.30 of 2008 seeking to restrain respondents-plaintiffs from interfering with their peaceful possession. The said suit was decided by the then learned Additional Civil Judge (Senior Division), Panchkula vide judgment and decree dated 28.02.2013 and had recognized the rights of appellants-defendant Nos.1, 2 and 4 not to be dispossessed forcibly but only by following procedure prescribed by law. Accordingly, they had sought dismissal of suit.

5. It was the case of appellants-defendants in Civil Suit No.30 of 2008 preferred by them that they are proprietors of Village Majri, Panchkula, and are in possession of bada/land in dispute which is subject matter of present case also, being their ancestral property adjoining to their residential house. It was asserted that the same is ancestral land and the bada/suit land was mutually partitioned and vegetables were being grown by

appellants-defendants. They had claimed physical possession over the same. It was asserted that Amarjit Kaur had left the village 50 years ago and had shifted to Delhi and has now started interfering with their peaceful possession after coming back to Panchkula. That in the year 2005, Estate Officer, HUDA had issued notices to respondents-plaintiffs qua their encroachment over suit property, however, respondents-plaintiffs were found innocent and not the encroacher and were allowed to continue being in possession of suit property.

6. The said suit bearing No.30 of 2008 was duly considered on merits, issues were framed, due opportunity was granted to both the sides to lead their evidence. Both the parties led their respective evidence and vide judgment and decree dated 28.02.2013 passed by learned Additional Civil Judge (Senior Division), Panchkula, the learned Court had found that the suit property is neither ancestral property of appellants nor appellants-defendants are proprietors of the village. It was therefore, found that appellants-defendants had encroached upon the land owned by Amarjit Kaur. However, in view of the fact that respondents-plaintiffs had succeeded in establishing their possession, it was directed that respondents-plaintiffs can claim possession of suit land only by following due process of law.

7. Against said judgment and decree dated 28.02.2013 appeal was preferred by respondents-plaintiffs bearing Civil Appeal No.2385 of 2013 which was decided by learned Additional District Judge, Panchkula vide judgment and decree dated 15.07.2014. However, the appeal met with the same fate and again it was found that respondents-plaintiffs in that case and present appellants-defendants have no right over the suit property and their possession was held to be illegal.

8. Aggrieved by judgment and decree dated 15.07.2014, appellants had preferred regular second appeal bearing No.5553 of 2014 which was decided on 03.11.2014 whereby, regular second appeal was also dismissed. RSA-5272-2015 which was preferred by respondents-plaintiffs, was also withdrawn on 05.01.2016 keeping in view the judgment dated 03.11.2014 passed by this Court in RSA-5553 of 2014 preferred by appellants-defendants.

9. Therefore, issue of ownership as claimed by appellants-defendants stood settled by judgment and decree dated 28.02.2013, 15.07.2014 and order affirming their correctness passed in RSA No.5553 of 2014 decided on 03.11.2014.

10. Present case is second round of litigation between the parties. The second/present suit was preferred by respondents-plaintiffs, in pursuance of the judgment and decree passed in the first suit preferred by appellants-defendants wherein appellants-defendants were found in illegal possession of suit land and were protected by order that possession can be taken only in furtherance to due process of law. Respondents-plaintiffs had also sought mesne profits for retaining the possession illegally without having any right. Suit was decreed vide impugned judgment and decree dated 21.11.2022. Appeal preferred by appellants-defendants was also dismissed by learned Appellate Court.

11. It is worth noticing that in pursuance of execution, the possession of suit land stands delivered to the respondents-plaintiffs. However, appellants-defendant Nos.1, 2 and 4 are aggrieved by quantification of mesne profits and had accordingly, filed present regular second appeal. However, appellants-defendant Nos.1, 2 and 4 have already

lost first round of litigation wherein they had claimed ownership over suit property but were found to be in illegal possession of the suit property. Therefore, they have no right over suit property and being in illegal possession are liable to pay mesne profits for illegal occupation and use.

12. At this stage, learned counsel for the appellants-defendant Nos.1, 2 and 4 has tried to argue that Court had not held appellants-defendants to be in possession of the suit land. However, in view of admissions/claim made in earlier suit as well as in present suit wherein appellants-defendant Nos.1, 2 and 4 have claimed possession over suit property, it is not permissible for them to deny possession of the suit property when they are found liable to pay mesne profits. They are bound by their own admission whereby they had claimed possession.

13. Faced with above, learned counsel for the appellants-defendant Nos.1, 2 and 4 has challenged quantification of mesne profits by the Courts below on the ground that no yardsticks have been followed in order to calculate the mesne profits. However, I do not find any merit in the contentions raised on behalf of appellants-defendant Nos.1, 2 and 4. Appellants-defendant Nos.1, 2 and 4 have been found to be in illegal possession of the suit land and are denying possession of suit property to the respondents-plaintiffs since 2008, whereas mesne profits have been only assessed from date of filing of present suit which was filed on 12.01.2016 after conclusion of first round of litigation which was initiated by none but appellants-defendants.

14. It is therefore clear that mesne profits @Rs.5,000/- per month have been assessed for illegal possession of 15 marlas of land for more than 18 years which had forced original land owner to litigate. The mesne profits

@Rs.5,000/- per month keeping in view area of land and fact that it is within abadi deh of village Majri, Panchkula which is adjoining the main town of Panchkula, where similar suit property measuring 15 marla would fetch rent not less than Rs.50,000/- per month, cannot be held to be excessive.

15. The argument raised on behalf of learned counsel for the appellants-defendant Nos.1, 2 and 4 that other defendants have already settled their dispute with plaintiff and therefore, they are not liable to pay mesne profits on their behalf, is also without any merit. There was no segregation of possession while filing the suit No.30 of 2008, all the five original plaintiffs of suit No.30 of 2008 had claimed joint possession and therefore, liability is joint and several and cannot be separated at this stage. No other question of law or fact arises in present case. Present regular second appeal is without any merit, hence dismissed.

16. Pending application(s), if any, is/are disposed of accordingly.

18.05.2026
Ravinder

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No