

2026-PHHC-048100



174 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2938-2023 (O&M)

Decided on:-24.03.2026

Bashir (deceased) thr. his LRs and another ..Appellants...

VS.

Hamidi ...Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jain, Advocate for the appellants.

HARKESH MANUJA J. (Oral)

CM-10411-C-2023

Prayer in this application is for condonation of delay in filing the appeal.

Having heard learned counsel for the applicant-appellant and gone through the contents of the application, sufficient cause has been made for condoning the delay.

Accordingly, application is allowed and delay of 53 days in filing the appeal is condoned.

CM-10412-C-2023

1. Prayer in this application is for impleading the legal representatives of appellant No.1-Bashir (since deceased).
2. Having heard learned counsel for the applicants-appellants and gone through the contents of the application, prayer made herein is allowed and persons mentioned in para 2 of the application are ordered to be impleaded as legal representatives of appellant No.1-Bashir (since

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deceased).

Main case

1. The defendants are in appeal. First Appeal filed by the appellants-defendants was dismissed by the learned First Appellate Court. For the sake of convenience, the parties are referred to as per their status in the Civil Suit.

2. By way of present appeal, challenge has been laid to judgment and decree dated 14.02.2023 passed by the Court of learned District Judge, Nuh (hereinafter to be referred as the "*First Appellate Court*"), whereby an appeal filed at the instance of appellants-defendants, against the judgment and decree dated 11.09.2019 passed by the Court of learned Additional District Judge, Ferozpur Jhirka (hereinafter to be referred as the "*trial Court*"), decreeing the suit for permanent injunction; was dismissed, resultantly, affirming the judgment and decree passed by the learned trial Court.

2. Briefly stating, the plaintiff, claiming herself to be owner-in-possession of the property, being a residential house comprising of rooms, tin sheds and open chowk, situated in Ward No.13 (Old Ward No.15), Ferozpur Jhirka, District Nuh, filed a suit for permanent injunction restraining the defendants from interfering with her peaceful possession of the suit property and from demolishing the existing construction thereon in any manner. It was pleaded that the plaintiff has been in longstanding possession of the suit property and was residing therein. It was further pleaded that the plaintiff owned no other residential house in Ferozpur Jhirka, District Nuh and that her possession stands duly recorded in the Municipal Committee records along with consistent payment of house tax. It was further pleaded that the defendants had no right, title or interest in the property in dispute. The plaintiff had further alleged that the defendants

extended threats of forcible dispossession and demolition of the construction, hence the suit for permanent injunction was filed at the instance of plaintiff.

3. Upon notice, the defendants appeared and filed written statement while submitting that the suit was not maintainable as the plaintiff had no *locus standi* to file the same. It was alleged that the plaintiff was neither owner nor in possession of the suit property, and that the Mosque is the owner-in-possession thereof; consequently, the plaintiff had no right, title, or interest in the same. It was further alleged that the Haryana Wakf Board, being the owner/caretaker of the Mosque, was a necessary party, and that the plaintiff deliberately, did not implead the same in the present proceedings. It was also averred that the plaintiff, in collusion with her husband and officials of the Municipal Committee, Ferozepur Jhirka, District Nuh, illegally got her name recorded in the D & C Register without any notice to the defendants or the Mosque. It was contended that the alleged site plan attached with the amended plaint was also wrong, illegal, null, void and against actual facts and spot. It was prayed that the plaintiff was neither owner nor in possession of the suit property and thus, the suit be dismissed.

4. On the basis of the pleadings of the parties, the learned trial Court framed the following issues on 25.10.2017:-

*“1. Whether the plaintiff is entitled to the decree for permanent injunction on the grounds mentioned in the plaint?
OPP*

*2. Whether the plaintiff suit is not maintainable in the eyes of law?
OPP*

*3. Whether the plaintiff has no locus standi to file the present suit?
OPD*

4. Whether the plaintiff is estopped from filed the present suit by

his own act and conducts? OPD

5. Relief.”

5. The learned trial Court vide its judgment and decree dated 11.09.2019 decreed the suit in favour of plaintiff. Aggrieved thereof, first appeal was preferred at the instance of defendants, which was dismissed by the Court of learned District Judge, Nuh vide judgment and decree dated 14.02.2023, thereby, affirming the decision of the learned trial Court.

6. Impugning the aforesaid judgments and decrees passed by the Courts below, learned counsel for the defendants submits that the both the Courts below have erred in law while ignoring the fact that the suit property formed part of a mosque and thus, the plaintiff could not claim any independent right. He further submits that the municipal record relied upon by the plaintiff was the outcome of fraud and did not confer any right. He further contends that the learned Courts below have wrongly brushed aside the evidence in the form of mutation (Ex.D/8) and testimony of PW-2 Hamidi and erroneously relied upon the assessment register for the year 2001-2002 (Ex. P2) and thus, prayed for setting aside of judgments and decrees passed by both the Courts below.

7. I have heard learned counsel for the appellant and gone through the paper-book.

8. A perusal of record shows that the plaintiff specifically pleaded and deposed that she has been residing in the suit property for a long time and had no other residential house. This fact was duly proved by her by placing on record the assessment register (Ex.P2) of Municipal Committee, wherein only one residential accommodation is shown in her name. The appellants-defendants, on the other hand, failed to substantiate their plea that

the property belongs to the Mosque or that the plaintiff, along with her husband, in collusion with officials of Municipal Committee, Ferozepur Jhirka illegally got her name recorded in the records of Municipal Authority, Ferozepur Jhirka.

8.1. No cogent evidence was produced on record to establish ownership or possession of the Mosque over the suit property as neither any Imam of the adjoining Mosque nor any person managing the affairs thereof, was examined. Even no material evidence was brought on record to prove that any proceedings were initiated by the Wakf Board against the plaintiff with respect to the suit property.

8.2. Moreover, the defendants never claimed themselves to be the owners of the suit property and claimed themselves solely as worshippers of the adjoining Mosque. It is a settled principle of law that a person in settled possession of property cannot be dispossessed except by following the procedure established by law, thus, the Courts below have rightly relied upon the evidence to conclude that the plaintiff is in possession of the suit property and is entitled to protection thereof.

9. Resultantly, in view of the discussion made herein-above, finding no illegality of perversity in the concurrent findings of facts and law, recorded by the Courts below; there being no misreading or misinterpretation of pleadings and evidence, the present appeal being devoid of merits is thus, dismissed.

10. Pending application, if any, also stands disposed of.

24.03.2026

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Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/ No

(HARKESH MANUJA)
JUDGE