



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

237

RSA-1417-2012 (O&M)

Date of decision : 20.01.2026

Nirmal Kaur

..... Appellant

versus

Gurmit Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sudeep Mahajan, Senior Advocate with
Ms. Saachi Mahajan, Advocate
for the appellant.

Mr. Inderjit Sharma, Advocate
for applicant-respondent No.2.

PANKAJ JAIN, J. (Oral)

On oral request made by counsel for the appellant, main case is taken on Board today itself, for final disposal.

CM-12137-C-2015

This is an application filed under Order I Rule 10 CPC read with Section 151 CPC for impleading Satnam Singh son of Makhan Singh son of Veer Singh, resident of Batala Road, Qaidan Tehsil Batala, District Gurdaspur as respondent No.3.

Notice of the application.

Mr. Sudeep Mahajan, Senior Advocate with Ms. Saachi Mahajan accepts notice on behalf of non-applicant/appellant and pleads no objection.

For the reasons recorded in the application, the same is allowed, subject to all just exceptions. Respondent No.3 is impleaded as



a party. Amended memo of parties is taken on record.

Main case

1. Plaintiff is in second appeal.
2. Plaintiff filed suit seeking decree of permanent injunction claiming to be lessee over the suit property under defendant No.2 by virtue of registered lease deed dated 02.02.1999. The owner-defendant No.2 supported the claim of the plaintiff. Defendant No.1 contested the suit.
3. Defendant No.1 claimed tenancy under defendant No.2 on the strength of agreement of rent 27.07.1998 and asserted that he has raised boundary wall and room over the suit property. He further claimed his possession on the basis of khasra girdawri corrected by revenue authorities vide order dated 07.09.2000. He strongly contested the status of Nanak Singh as attorney of plaintiff-Nirmal Kaur.
4. Court of the First Instance framed following issues on the basis of pleadings:-

1. *Whether the plaintiff is entitled to the permanent injunction as for? OPP*
2. *Whether the suit is not maintainable in the present form? OPD*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the plaintiff is estopped by her act and conduct from filing the present suit? OPD*
5. *Whether the suit of the plaintiff is false and frivolous? OPD*
6. *Relief."*

5. Trial Court relied upon ocular evidence of DW1 and DW2 to hold that they proved the evidence of defendant over the suit



property, whereas the plaintiff miserably failed to prove his possession and dismissed the suit filed by the plaintiff.

6. The findings stand affirmed by the learned Lower Appellate Court.

7. Learned senior counsel appearing for the plaintiff-appellant has assailed the findings recorded by the Courts below. It has been contended that defendant No.1 earlier filed suit seeking injunction against the plaintiff. The plaint was accompanied by an application filed under Order XXXIX Rule 1 and 2 CPC. Injunction application filed by defendant No.1 in the said suit was dismissed vide order dated 11.09.1999. Defendant No.1 preferred appeal. He withdrew the miscellaneous appeal as well as suit. The Courts below completely ignored material evidence on record and have decided the suit, as if it was a suit filed by Nanak Singh and not by Nirmal Kaur.

8. Respondent No.1 has remained unrepresented despite service. Mr. Sharma, counsel for respondent No.2 submits that defendant No.2 has supported the claim of the plaintiff.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. From the perusal of the findings recorded by the both the Courts below, it is explicit that both the Courts below were swayed away by criminal proceedings initiated by Nirmal Kaur against her attorney through whom the present suit has been filed.

11. In the present suit, Nirmal Kaur through her attorney claimed to be lessee under defendant No.2. In fact, both the parties are claiming to be tenants under defendant No.2. Thus, the ownership of



defendant No.2 is not in dispute. Plaintiff has proved on record registered lease deed in her favour executed by defendant No.2 as Ex.P1. It has come on record that defendant No.1 Gurmit Singh earlier filed suit for permanent injunction claiming his possession over the suit land, i.e. civil suit no. 98/09.03.1999. The suit was contested by the parties including the plaintiff in the present case. Application for interim injunction filed under Order XXXIX Rule 1 and 2 filed by defendant No.1 in the said suit was dismissed by Civil Judge (Junior Division) Gurdaspur vide order dated 11.09.1999 Ex.P12 observing as under:-

“I have perused the file, on the one hand respondent No.3 is placed on record the receipts as issued in her favour by Lala Ram Saran Dass Dharmarth Trust and registered lease deed which has also been admitted by the trust. On the other hand entires in khasra girdawari have been corrected and alleged lease deed is for a period of 25 years which required compulsory registration and the same is unregistered which has also been denied by the trust and as such applicant has miserably called to prove his claim that he is in possession from the time of his ancestors and in fact there is lone entry in his favour in Haari 1998, which has been corrected by the reverse officers. At this stage, the property cannot be identified from photographs as placed on record. For seeking the relief of injunction the applicant's conduct is essential to be seen. In the present case plaintiff/applicant earlier filed a suit where he did not disclose that he is in possession in the capacity of lessee and only when the application u/o 1 Rule 10 CPC was allowed, he has come up with a new plea that he is in possession in the capacity of lessee and as such he is not entitled to the relief of injunction. Other is the property of the trust which is a public trust cannot be allowed to be usurped by tress-passer who has no legal document or any valid reason on the basis of which he took over the possession. In such a situation, injunction order if granted shall cause prejudice to the trust, the appeal is declined. The observations and the



findings given above shall have no bearing upon the merits of the main case.”

12. The appeal filed against the same was withdrawn by defendant No.1. He withdrew the suit too after his application filed under Order XXXIX Rule 1 and 2 CPC was dismissed. The Courts below completely ignored the aforesaid evidence on record and relied upon ocular evidence in form of testimony of DW2 and DW3 examined by defendant No.1. While plaintiff proved registered lease deed in her favour and the execution thereof was admitted by the owner of the property, witnesses examined by defendant namely Om Prakash DW1 and Ruldu Ram DW2 claimed that defendant No.1 was owner of the property in question which is not even the plea raised by defendant No.1. Moreover, ocular evidence ought not have been looked into once registered lease deed was proved.

13. The Courts below erred in ignoring overwhelming evidence on record that proves possession of the plaintiff and wrongly relied upon oral testimonies of the witnesses examined by defendant which are beyond pleadings. The findings being perverse need to be reversed.

14. Needless to observe that the regular second appeal before this Court has to be dealt in accordance with Section 41 of the Punjab Courts Act. Reference can be made to observations made by Five Judges Bench in the case of **‘Pankajakshi vs. Chandrika’ (2016) 6 SCC 157**, which reads as under:

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23. Shri Viswanathan also relied upon a Division Bench judgment of this Court in *Kulwant Kaur v. Gurdial Singh Mann* [*Kulwant Kaur v. Gurdial Singh Mann*, (2001) 4 SCC



262] , to submit that this decision is an authority for the proposition that there is no need to expressly refer to a local law when the legislative intent to repeal local laws inconsistent with the Code of Civil Procedure is otherwise clear.

24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under :

“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to



lie where, 'the case involves a substantial question of law'. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

'100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....'

These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

'97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.' (Noticed again for convenience.)

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137]



cannot be sustained and is thus overruled.”

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.

26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262]. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which



law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.

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15. Misreading of evidence leads to perversity in the findings which breeds substantial question of law.
16. In view of above, this Court finds that the judgment and decree passed by both the Courts below need to be reversed and the suit filed by the plaintiff deserves to be decreed.
17. Disposed off, accordingly.
18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

20.01.2026

Dinesh

Whether speaking/reasoned :

Yes

Whether Reportable :

No