



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
106

RSA-4969-2012(O&M)
Date of decision: 10.04.2026

Shri Sanatan Dharam Sabha (Regd) Bathinda

...Appellant(s)

Vs.

Narotam Dass Gupta (since deceased) thr LRs & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Anurag Chopra, Advocate
Mr. Darika Sikka, Advocate
for the appellant.

Mr. Binderjit Singh, Advocate
for respondents No.1 and 2
and Shashi Kumar/respondent No.1(i) in person.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned District Courts whereby suit filed by the appellant for permanent injunction has been dismissed by both the District Courts.

2. The plaintiff had filed the instant suit praying for permanent injunction restraining defendants from interfering in his peaceful possession over the suit plot measuring 5 bighas 6 biswas as described in the plaint.

3. With these pleadings, suit was filed on **01.07.2004**. However, subsequently, vide Settlement dated **07.06.1999**, the plaintiff had withdrawn the suit by suffering statement to this effect.



4. The defendant No.1 had also filed written statement and counter-claim whereby defendant No.1 claimed his possession over the suit property and sought relief of injunction against the plaintiff-Sabha restraining them from interfering in his possession over 4 bigha 5 biswa of land. Subsequently, the counter-claim was amended and fresh ground was added that decree of possession for land measuring 2 bigha out of Khasra No.1810/2 min be passed.

5. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Additional Civil Judge (Senior Division), Bathinda had dismissed the suit of the plaintiff as withdrawn; whereas counter-claim was decreed with costs vide judgment and decree dated 18.01.2008, in the following manner:-

“28. In the light of my discussion on the above said issues, the suit of the plaintiff stand dismissed having been withdrawn whereas the counter claim is decreed with costs and the plaintiff sabha is directed to handover the possession of 2239 sq. yards of the land mentioned in Ex. DW3/2 as BCDEE1E2 to the defendant counter claimant within a period of two months failing which the counter claimant shall be entitled to seek the possession by resorting to legal remedy available under law. Decree sheet be prepared accordingly and the file be consigned to the record room.”

6. The Civil Appeal filed by the plaintiff was dismissed with costs by the learned Additional District Judge, Bathinda vide judgment and decree dated 16.07.2012. Hence, present second appeal by the plaintiff.



7. It is inter alia submitted by learned counsel for the appellant that learned District Courts have erred in decreeing the counter-claim of the respondent No.1 by overlooking the fact that defendant No.1 had claimed possession of 2 bigha of land out of total land comprised in Khasra No.1810/2 without specifying the dimensions and boundaries in the counter-claim. As such, the claim of the defendant No.1 was vague and not specific. Despite this major and material lacuna, District Courts have proceeded to pass the decree for possession in favour of the defendant No.1.

8. It is further submitted that the District Courts have put great emphasis on the application dated 25.02.1993 (Ex.DW2/1) moved by the plaintiff/appellant to the Deputy Commissioner, Bathinda for acquiring 2 bighas 3 biswas of land out of khasra No.1810/2 belonging to the defendant No.1 which had been shown as ABCD in the Site Plan (Ex.DW2/2) without correctly appreciating the prayer so made by the plaintiff. It is contended that by no stretch of imagination could it have been held that a mere request for acquisition of a greater chunk of land in khasra No.1810/2 could even remotely be held to divest the plaintiff from any inch of land in the given khasra number. The District Courts have erroneously misconstrued the area reflected as ABCD in the Site Plan (Ex.DW2/2) even though the plaintiff had fully described the dimensions and boundaries of the land which was in its possession after the exchange of 2334 square yards of land with M/s Brar Brothers.



9. It is submitted that even the report of the Local Commissioner could not have been relied upon as pucca points were not put as per law and as per High Court Rules and Orders. Even the report of the Local Commissioner has not been proved in accordance with law. Thus, counter-claim of the defendant No.1 could not have been decreed. It is accordingly prayed that the impugned judgments and decrees be set aside.

10. Per contra, learned counsel appearing on behalf of the respondents No.1 and 2 vehemently opposes the submissions advanced on behalf of the appellant/plaintiff and submits that counter-claimant had duly established on record that the plaintiff-Sabha had encroached upon 103-1/2 feet x 50 feet x 383 feet land falling in khasra number 1810 and therefore, the plaintiff has no locus standi to file the suit. It is submitted that defendant No.1 had duly established that the counter-claimant along with other co-sharers were owners in possession of 4 bigha 15 biswa of land comprised in Khasra No.1810/2 by virtue of Jamabandi 1987-88. Moreover, this Court in Second Appeal cannot disturb concurrent findings of fact returned by the District Courts. It is accordingly submitted that the impugned judgments and decrees suffer from no error of law or fact and the present appeal be dismissed.

11. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellant.



12. A perusal of the record of the case shows that the plaintiff had moved an application (Ex.DW2/1) in the year 1993 for acquiring land of defendants. A perusal thereof shows that plaintiff-Sabha was not in possession of portion marked ABCD in the Site Plan (Ex.DW2/2) measuring 2 bigha 3 biswa. Clearly therefore, if plaintiff was not in possession of the suit land measuring 2 bigha 3 biswa, then how he came in possession of the suit land which belongs to the defendants, has not been explained by the plaintiff either in pleadings or during oral evidence.

13. Further, defendant No.1 has succeeded in proving that he was in possession of the suit property vide Jamabandi (Ex.DW3/2) for the year 1992-93, which shows that defendant No.1 counter-claimant is owner in possession of Khasra No.1810/2 to the extent of 9/16th share. On the other hand, plaintiff has been unable to demonstrate as to how it came in possession of the suit property. In fact, from the own documents of plaintiff itself, possession of defendant No.1 over 2 bigha 3 biswa is established. Rights of the counter-claimant in Khasra No.1810/2 are established even from the documents (Ex.DW2/1 and Ex.DW2/2). Ex.DW2/1 is the certified copy of the application of plaintiff-Sabha; and DW2/2 is the certified copy of the Site Plan which was prepared in the file, which was produced in the Court by DW1 R.K. Garg, General Power of Attorney of the defendant No.1/counter-claimant Vinod Kumar. Thus, from the documents of the plaintiff themselves, rights of the defendant No.1/counter-claimant have been established. The plaintiff has



been unable to explain that if defendant No.1 was not the owner of the suit land then what was the necessity to issue notice or to seek acquisition of land of defendant No.1 by moving the letter/application (Ex.DW2/1).

14. Furthermore, vide report (Ex.DW3/4) presented by the Local Commissioner, it was shown that defendant No.1 was in possession of the disputed property measuring 2 bigha 3 biswa. Moreover, the Local Commissioner in his report (Ex.DW3/4) has also reported that plaintiff-Sabha is in possession of excess land to the extent of 2150 square yards.

15. Moreover, conduct of the plaintiff in first filing the suit and then withdrawing the same as also moving the application (Ex.DW2/1) to acquire land of the defendants establishes the case of the defendant No.1. Needless to say, an owner has a right to recover possession which has been illegally taken by encroacher in this case the plaintiff, without paying compensation.

16. On the other hand, the plaintiff has not produced any document of Revenue Record to prove its plea that plaintiff is co-sharer in disputed Khasra No.1810/2 or was in possession of any portion thereof. From the above facts, it is conclusively proved that land bearing Khasra No.1810/2 was not in possession of the plaintiff in the year 1993; and for acquisition of land, plaintiff had made a request (Ex.DW2/1) to the DC; but defendant No.1 had not given consent for acquisition of the said land. Therefore, once land has been in the possession of defendant No.1 in 1993, and there is nothing on record to show discontinuation of the said possession, then onus was upon the plaintiff-Sabha



to prove as to how they had come in possession but the plaintiff has miserably failed to discharge this onus. Furthermore, the plaintiff failed to produce the Local Commissioner before the learned trial Court for the purpose of his examination with regard to the report (Ex.DW3/4).

17. Before parting, it may also be pointed out that during pendency of the civil appeal, the plaintiff had filed an application dated 18.03.2010 under Order 41 Rule 27 CPC for additional evidence. The plaintiff had also filed another application dated 23.11.2011 for remand of the case for deciding objections filed by the plaintiff against report of Local Commissioner. However, both the applications were dismissed by the learned First Appellate Court.

18. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings.

19. In view of the above, present Regular Second Appeal stands **dismissed.**

20. Pending application(s) if any also stand(s) disposed of.

10.04.2026

Sunena

(Nidhi Gupta)

Judge

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