

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****222****RSA-244-2013 (O&M)****Date of decision: 19.03.2026****Dilbagh Rai****...Appellant(s)****Vs.****Bhajan Dass****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vijay Lath, Advocate and
Mr. S.K.Raghuvanshi, Advocate
for the appellant.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned District Courts; whereby suit filed by the appellant, for mandatory injunction with consequential relief of permanent injunction, has been dismissed by both the District Courts.

2. It was averred in the plaint that plaintiff is actual owner in possession of the suit property by way of Sale Deed dated 18.04.2002 from defendant and Desraj for a sale consideration of Rs.87,000/-. Plaintiff is presently residing at England. Therefore, suit was filed through lawful attorney. Defendant was alleged to be lawless and strong headed person, who had illegally taken forcible possession of suit property and also fixed gate at point EF on the suit property. It was further alleged that defendant had sown crop of wheat over the property and was threatening to take



possession of suit property owned by the plaintiff. Plaintiff requested the defendant to admit his claim, however to no avail. With these pleadings, present suit was filed on 20.05.2005.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar had dismissed the suit of the plaintiff vide judgment and decree dated 03.01.2012. The Civil Appeal filed by the plaintiff was dismissed with costs by the learned District Judge, Shaheed Bhagat Singh Nagar vide judgment and decree dated 15.05.2012. Hence, the present second Appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant that learned District Courts below have erred in non-suiting the appellant as they failed to appreciate that by way of the instant suit, plaintiff has sought two distinct reliefs, the first relief being mandatory injunction to remove the gate illegally installed by defendant at point EF as per Site Plan Ex.P3; and to vacate 2 M of land encroached upon by the defendant as the said land was in the ownership of the plaintiff, as during the absence of the plaintiff, the said land had been taken over by the defendant. Learned counsel submits that appellant has duly proven his case by examining his Power of Attorney Amrik Chand as PW1. However, the said evidence has been ignored by both the District Court.

5. The second relief sought by the plaintiff was with regard to permanent injunction. It is submitted that as the ownership of the appellant over the suit land has not been disputed by the defendant,



rather defendant has pleaded that he is co-sharer in the suit property but defendant has not claimed any possessory right over any portion of the suit property except the land underneath the gate, thus, plaintiff was entitled to relief of permanent injunction as well. Even the revenue record shows that property is co-owned by the plaintiff; and defendant has no right, interest or title in the suit property. From these facts it is clear that rights of the plaintiff have been invaded by the defendant.

6. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees be set aside.

7. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant.

8. It is firstly to be seen that plaintiff himself did not appear in the witness box and has appeared through his Attorney Amrik Chand PW1. Firstly, plaintiff has been unable to prove the Attorney executed in favour of Amrik Chand. Thus, suit of the plaintiff was not maintainable as it was not properly filed.

9. Further any evidence led by PW1, is not admissible as after filing his Affidavit of examination-in-chief, he failed to appear in the witness box for further cross-examination. Thus, cross-examination of Amrik Chand could not be conducted. The facts which were in the personal knowledge of the plaintiff could not be proved as PW1 did not appear for cross-examination. Thus, as the plaintiff had failed to appear in



the witness box and statement of PW1 is not complete, therefore, adverse inference is liable to be drawn against the plaintiff.

10. Moreover, plaintiff has no locus to file the suit as Site Plan Ex.P3 produced by him, was not correct, as it is totally different from the Aksh Shajra. PW1 Attorney Holder of the plaintiff has denied his signature on the said Site Plan. Further Site Plan Ex.P3 was prepared by Hardev, Architect who was not produced to prove the Site Plan. Thus, said Site Plan Ex.P3 cannot be read into evidence. Therefore, the very basis on which the plaintiff has filed the suit, falls, as such plaintiff has no locus to file the suit.

11. Moreover, witness of the plaintiff himself i.e. PW2 Amarjit Singh has admitted that the suit land is in the ownership of the defendant. PW2 has further admitted that disputed gate has been erected in the property of the defendant. Even from the cross-examination of PW2, it is evident that defendant had erected gate in his own property; and each party is in possession of their own respective property. To conclude, plaintiff's witness PW2 Amarjit Singh has admitted in his cross-examination that disputed land belongs to Bhajan Dass. Land of the plaintiff and Bhajan Dass are separate. Thus, plaintiff miserably failed to prove his case that defendant had encroached upon 2M of land and fixed gate on his land. There is no evidence to indicate any encroachment by the defendant.

12. Ld. Counsel for the appellant is unable to dispute or controvert the above said facts and findings.

13. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. Hence, present Second Appeal stands **dismissed**.
14. Pending applications, if any, stand disposed of.

19.03.2026

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No