

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****223****RSA-1491-2016 (O&M)****Date of decision: 27.01.2026****Satbir****...Appellant(s)****Vs.****Rameshwar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. Parvinder Singh, Advocate
for respondent No.1.

NIDHI GUPTA, J.

Defendant No.1 is in Second Appeal against the judgment of reversal; whereby suit filed by the plaintiffs/respondents No.1 and 2 herein for mandatory injunction alongwith consequential relief of permanent injunction, although dismissed by learned Trial Court, has been decreed by the First Appellate Court.

2. The pleaded case of the plaintiffs/respondents No.1 and 2 herein, is that they are the owners in possession in equal shares of plot measuring 6M, in Khasra No. 99 as gair mumkin plot (hereinafter referred to as "suit land") as described in the plaint. It was alleged that defendants No.1 and 2 in association with other persons are bent upon illegally occupying the suit property. It was further alleged that defendant No.3 Gram Panchayat had encroached upon the suit property to the extent of



area measuring 54 x 13 sq.ft. by constructing rasta upon the same as per Demarcation Report dated 29.08.2011. Despite repeated requests, defendant No.3 has refused to remove the encroachment and had ultimately refused to accept the demand of the plaintiffs. With these pleadings, present suit was filed on 21.09.2011.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Jhajjar had dismissed the suit of the plaintiffs vide judgment and decree dated 14.05.2015 on account of the fact that: possession of the plaintiffs was not proved over the suit property as plaintiff in his cross-examination had stated that defendants have encroached upon the land in September, 2012. It was held that as it was admitted by the plaintiff No.1 as PW1 that present suit was filed after defendants had encroached upon the suit property; and therefore, the plaintiffs were required to file suit for possession.

4. However, Civil Appeal filed by the plaintiffs was accepted by learned Additional District Judge, Jhajjar; and vide judgment and decree dated 02.12.2015, suit of the plaintiffs was decreed as follows: -

“21. Thus, in sequel to my above observations, I am of the considered view that the learned Civil Judge wrongly decided the issue no. 1 to 3, in favour of defendants and against the plaintiffs. The impugned judgment & decree is hereby set aside by allowing the present civil appeal. Accordingly, defendant no. 3 is hereby directed to remove the unauthorised pacca rasta from the site in dispute marked by letters FGB and shown by green color in the site plan Ex.P3, and to restore the site in dispute in its original position. All



the defendants are hereby also directed to permanently restrain from using the plot of the plaintiffs comprised in khewat no.57/52, khatoni no.69, khasra no.99, measuring 0 kanal 6 marlis situated in village Chhadwana. They are further directed not to interfere in the raising of boundary wall by plaintiffs for peaceful enjoyment of their suit property. Decree sheet be prepared accordingly. Both the parties to bear their own costs. Trial Court record be sent back with a copy of this judgment. Appeal file be consigned to record room, after due compliance.”

5. Hence, present Second Appeal by defendant No.1.

6. It is *inter alia* submitted by learned counsel for the appellant that the learned First Appellate Court was in error in not appreciating the fact that relief of permanent injunction could not have been granted to the plaintiff as it was the own pleaded case of the plaintiffs that the appellant was in possession of the suit land. It is submitted that moreover in decreeing the suit of the plaintiffs, learned First Appellate Court has also ignored the fact that defendants No.1 and 2 are owners of the suit land which was purchased by their father Amar Singh from Rattan Singh and Ram Karan vide Sale Deed dated 20.01.1982 Ex.D1. It is submitted that possession of the suit property was delivered to the appellant on the same day and writing to this effect was also written before Gram Panchayat. It is contended that therefore, as the defendants No.1 and 2 are owners in possession of the suit land, injunction could not have been granted.



7. It is submitted by learned counsel for the appellant that the learned first appellate court has erred in ignoring the fact that the defendant has duly proved on record that they are in possession of the suit land by producing on record the document Ex. D1 i.e. the writing with regard to sale of the suit property by Rattan Singh and Ram Karan in favour of the father of the defendants No. 1 and 2. This fact has been duly proved on record by the defendants by examining three witnesses DW1 to DW3, out of which DW2 and DW4 also happen to be the signatory of that writing. Although the above said document is not a document of title but the said document can be read for collateral purpose of delivery of possession. In the instant case there is clear recital in Ex. D1 that the possession of the suit land is with the defendants since 1982.

8. Learned counsel for the appellant further submits that the learned first appellate court has further committed an error by ignoring the admission of plaintiff No.1 with regard to possession of the suit property. The plaintiff No. 1 while appearing as PW1, has admitted that the present suit has been filed by him after the defendants encroached on the suit property. This fact clearly establishes that the plaintiffs were not in possession of the suit property on the date of filing of the suit rather the defendants were in possession of the same. Therefore, when the plaintiffs are not in possession of the suit property, their suit for mandatory injunction with consequential relief of permanent injunction is not maintainable. Therefore, the judgment and decree passed by the first appellate court is liable to be set aside on this score alone.



9. Learned counsel for the appellant further submits that the learned lower appellate court has wrongly allowed the application of the plaintiffs under Order 41 rule 27 of CPC and taken on record the sale deed and wrongly believed the ownership of the plaintiffs on its basis.

10. It is further submitted by Id. counsel for the appellant that the first appellate court has further erred in disbelieving the document Ex. D1 produced by the defendants, on its own assumptions and presumptions, without any pleadings of the parties and held that this document does not seem an old document, without getting it examined by any expert.

11. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 02.12.2015 passed by learned Additional District Judge, Jhajjar be set aside.

12. *Per contra*, learned counsel for the plaintiffs vehemently opposes submissions advanced on behalf of the appellant and submits that the suit qua defendant No. 3 already stands executed in as much as defendant No.3 Gram Panchayat has removed the encroachment from the suit property.

13. As regards, the defendants no. 1 and 2, Id. Counsel submits that the Sale Deed dated 20.1.1982 Ex.D1 relied upon by defendants No.1 and 2 is not a registered document; whereas plaintiffs have registered Sale Deed dated 31.08.1989 in their favour. It is submitted that although the said Sale Deed was not produced by the plaintiffs before the learned Trial Court however, the same was produced by the plaintiffs before the



learned First Appellate Court by way of additional evidence. It is submitted that thus keeping in mind the said facts that plaintiffs were proven to be owners of the suit land, the learned First Appellate Court had decreed the suit.

14. It is further submitted that Sale Deed Ex.D1 has been executed in favour of defendants No.1 and 2 by one Rattan Singh and Ram Karan. It is submitted that the said land was also owned by one Lali and therefore, the Sale Deed in favour of defendants No.1 and 2 is defective. It is pointed out on the other hand, the Sale Deed dated 31.08.1989 in favour of the plaintiffs is executed by all the 3 owners of the suit land being Rattan Singh, Ram Karan and Lali. It is contended that therefore, defendants have no document of title.

15. Ld. counsel further points out that the part of the suit land in possession of the appellant is admittedly a vacant plot. Learned counsel relies upon judgment of Lahore High Court passed in **Chain Sukh vs. Gopi Ram (Lahore): Law Finder Doc Id# 1004297**; wherein it is held that *“in the case of a vacant site, possession follows title, and the burden of proof lies on the party alleging to have acquired ownership by adverse possession.”* Learned counsel contends that as the appellant had been unable to prove his ownership over the suit property, and in view of the fact that part of the suit land is admittedly a vacant site, any possession of the appellant may have over the suit property would only be in pursuance to the title and therefore, any possession of the appellant cannot be legal and valid.

He accordingly prays for dismissal of the present Appeal.



16. No other argument is raised on behalf of the parties. I have heard learned counsel for the parties and perused the case file in great detail. I find merit in the submissions advanced on behalf of the plaintiffs/respondents No.1 and 2.

17. It has been contended on behalf of the appellant that defendants No.1 and 2 are owners in possession of the suit land in pursuance to Sale Deed dated 20.01.1982 Ex.D1. However, it is undisputed fact on record that the said Sale Deed is not a registered document. It is also not disputed by learned counsel for the appellant that sale deed dated 20.1.1982 was executed by Rattan Singh and Ram Kumar, and not by the third owner, namely Lali. Furthermore, learned Courts below have duly noted that the document Ex.D1 relied upon by the defendants to prove their ownership, on the face of it, appears to be false and fabricated as it did not appear to be 33 years old. Although the said document was stated to be attested by Sarpach late Hardwari Lal, however defendants failed to compare the alleged signature of late Hardwari Lal from other documents of Gram Panchayat by examining any Handwriting Expert.

18. On the other hand, plaintiffs had duly proved their ownership over the suit land vide registered Sale Deed dated 31.08.1989 Ex.AP which was duly corroborated by Jamabandi for the year 2005-2006/ Ex.P2. Needless to say, presumption of truth is attached to registered sale deed. Presumption of truth attached to Jamabandi is rebuttable. However, appellant has not led any evidence to rebut the presumption. Moreover, even Aks shazra Ex.P1 reflects the ownership of the plaintiff over the



hasra No. 99 measuring 6 M described as gair mumkin plot. In the site plan Ex.P3 it is also recorded that in respect of red portion with defendants No.1 and 2, complaint Mark A has been given to the District Collector.

19. As regards contention of the appellant that plaintiffs have admitted possession of the appellant over the suit property and, therefore, injunction could not be granted to them; during the course of arguments, appellant has admitted that the suit property is a gair mumkin vacant plot. The said fact is also established from the above referred revenue record. Learned counsel for the appellant has also been unable to dispute the judgment of the Lahore High Court relied upon by learned counsel for the plaintiff. The said view has been reiterated by our Hon'ble Supreme Court in a more recent judgment passed in **Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRs, (SC): Law Finder Doc Id # 143411;** wherein it is held that: -

"14. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure



possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.”

20. In view of the above factual and legal position, the present Regular Second Appeal stands **dismissed**; and the impugned judgment and decree dated 02.12.2015 passed by learned Additional District Judge, Jhajjar directing defendants No.1 and 2 to permanently restrain from using the plot in question and not to interfere in the plaintiffs’ peaceful enjoyment of their suit plot, is upheld.

21. Pending applications, if any, stand disposed of.

27.01.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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