

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****119****RSA-791-2023 (O&M)****Date of decision: 18.03.2026****Kulwant Singh****...Appellant(s)****Vs.****Inder Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Shivender, Advocate
for the appellant.

Mr. Vinod K. Kaushal, Advocate and
Ms. Saroj Kumari, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the learned District Courts; whereby suit filed by the plaintiff/respondent herein, for possession, has been decreed by both the District Courts.

2. Brief facts of the case are that the plaintiff had filed a civil suit *"for Possession of shop converted into space in damaged condition measuring approximately 9 X 16 feet and 3 feet wide open space as shown red in colour being part of main house marked A,B, C and D bearing khasra no.4907 min comprising Deori, Lobby, Room, kitchen and toilet owned and possessed by plaintiff situated in Abadi Kot Mit Singh after crossing railway fatak, Tarn Taran Road, Amritsar described as under:-*



North: property of Bhajan Singh;

South: Property of Mukhtiar Singh Fauji;

East: Tarn Taran Road;

West: Residence of defendant and main bazar as mentioned in the site plan dated 20.03.2015.”

3. It was further averred that during the pendency of the suit the defendant is threatening to convert the said disputed portion into a shop. As the defendant wanted to change the nature of disputed portion by converting the same into a shop, the said action would change the nature of suit property and would also create multiplicity of litigation. With these pleadings, the present suit was filed on 26.03.2015.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Amritsar had decreed the suit of the plaintiff vide judgment and decree dated 14.02.2020 holding that *“plaintiff is entitled to possession of shop converted into space in damaged condition measuring approximately 9 X 16 feet and 3 feet wide open space as shown red in colour being part of main house marked A,B, C and D bearing khasra no.4907 min comprising Deori, Lobby, Room, kitchen and toilet owned and possessed by plaintiff situated in Abadi Kot Mit Singh after crossing railway fatah, Tarn Taran Road, Amritsar described as under :- North: property of Bhajan Singh; South: Property of Mukhtiar Singh Fauji; East Tarn Taran Road; West: Residence of defendant and main bazar as mentioned in the site plan dated 20.03.2015. Defendant is directed to handover the possession of the suit property to the plaintiff within three months. Decree sheet be prepared accordingly.”*



5. The Civil Appeal filed by the defendant was dismissed with costs by the Additional District Judge, Amritsar vide judgment and decree dated 21.09.2022. Hence, the present second Appeal by the defendant.

6. Learned counsel for the appellant submits that the learned Districts Courts have nonsuited the appellant only on the ground that appellant could not produce the original Compromise effected between the parties. It is submitted that after the complaint had been moved by the respondent/plaintiff against the appellant, a Compromise was affected between the parties at the Police Station. It is submitted that the appellant had duly apprised both the District Courts that original writing of Compromise was kept in the Police Station. However, appellant has been non-suited only on the ground that he had failed to produce the original Compromise writing. It is submitted that learned Districts Courts failed to appreciate that the police officials of the concerned Police Post have refused to supply copy of the same to the appellant on the pretext that they had forwarded the original record of the complaint and compromise to the main Police Station. Upon inquiry from the main Police Station, it was disclosed to the appellant that after passing of 3 years they have to destroy the record. As such, only on this ground, learned District Court reached on wrong conclusion and wrongly decided the suit in favour of the plaintiff.

7. It is submitted that learned District Courts also failed to appreciate that suit of the plaintiff was not legally maintainable qua the specific area of the portion which already falls under his share. In fact,



under the guise of present suit, plaintiff is trying to grab and encroach upon the area of the share of the appellant forcibly and illegally. Plaintiff has not even disclosed the material facts at the time of filing of suit thus, leading to wrong decision. It is submitted that appellant is the exclusive owner of the area of 75 sq. yds out of the suit property; and after deducting the area left in construction of the common street of 3 feet breadth, he is in possession of the area of 72 sq. yds. It is submitted that if plaintiff is permitted to keep his illegal encroachment and possession, Share of the appellant will be reduced to 62 sq. yds.; thereby appellant will be denied his valuable rights over the property of his share measuring 13 sq. yds. and will also be denied from using common street towards main Tarn Taran road.

8. It is accordingly prayed that present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

9. 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 appellants.

10. Perusal of the record of the case reveals that previously father of the defendant, namely, Seva Singh son of Tara Singh was the owner of the suit house on the basis of registered Sale Deed dated 04.03.1986; pursuant to which Mutation No. 21112 was sanctioned in favour of Seva Singh. Vide registered Sale Deed dated 23.05.1989, Seva Singh had sold the suit house to the plaintiff; whereafter Mutation No. 21113 was sanctioned in favour of the plaintiff, and plaintiff had started



residing there. It had been alleged that defendant/appellant had taken forcible possession of the shop and converted it into open space in damaged condition; approximately measuring 9 X 16 feet alongwith 3 feet after fixing a back door as shown in red colour, which formed part of the main house. This said allegations of the plaintiff were proved to be correct from the evidence of DW4 Viro, wife of the defendant himself, who has admitted in her cross-examination that the Site Plan Ex.P2 submitted by the plaintiff, is correct as per spot. Thus, defendant's witness DW4 has corroborated and supported the case of the plaintiff, thereby disputing and disproving the case set up by the defendant.

11. The record further reveals that in para 5 of the plaint, plaintiff has averred that he was dispossessed forcibly from the suit property by the defendant and suit property was converted by the defendant into an open space in damaged condition. In his written statement, defendant has not filed reply to para 5; and after para 4, para 6 has been mentioned. Thus, defendant has not denied that he has forcibly dispossessed the plaintiff from the suit property.

12. Defendant had further alleged that the disputed street of 3 feet width is common street between the parties and nobody will claim exclusive right over the said street. Furthermore, according to the stand taken by the defendant, property had been divided between the plaintiff and defendant on the basis of Compromise Deed dated 23.03.2013, but defendant had failed to place on record even a copy of the said Compromise. DW2 Gulzar Singh had admitted in his cross-examination



that he had not brought the original Compromise Deed dated 30.03.2013. Original Compromise was not produced; and mere exhibition of the document, does not dispense with its proof.

13. Even further, any testimony made by the defendant cannot be read into evidence as defendant had not concluded his cross-examination. The defendant was only partly cross-examined on 23.01.2019; and his further cross-examination was deferred on ground of producing alleged Compromise dated 23.03.2013. However, thereafter, defendant had failed to appear.

14. Moreover, plaintiff had examined PW1 Gurdip Singh, Deed Writer, who had scribed the Sale Deed dated 23.05.1989 Ex.P2 executed by Seva Singh in favour of the plaintiff. From the evidence of PW1, the said Sale Deed dated 23.05.1989 Ex.P2 stood proved. Thus, it was conclusively established that plaintiff is owner of the property in question. On the other hand, Appellant was unable to rebut the case of the plaintiff and was also unable to prove his own case as his evidence remained incomplete. DW3 Rajwinder Kaur had sought to prove the Site Plan Ex.D3 but she has admitted in her cross-examination that the said Site Plan was not prepared by her, and it does not even bear her signature at any point. Thus, merely on the basis of oral testimony, Site Plan cannot be taken to be proved. On the contrary, DW4 Viro, wife of the defendant/appellant has admitted in her cross-examination that *"Site Plan Ex.P2 in judicial file in the court which is correct as per spot."* She has further deposed that house of the defendant is situated behind the house of the plaintiff

towards western side; and that the property of the defendant is abutting 16 ft. road i.e. the main road. She has also admitted that suit property was purchased by the plaintiff from Seva Singh vide registered Sale Deed dated 23.05.1989. Thus, plaintiff was able to prove his ownership and possession of the suit property. Therefore, defendant has no right over the same. Appellant has, therefore, been rightly non-suited.

15. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

16. 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**.

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

18.03.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No