

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****236****RSA-6407-2017 (O&M)****Date of decision: 10.03.2026****Saloni****...Appellant(s)****Vs.****Jiwan and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. C.L.Sharma, Advocate
for the appellant.

Mr. Munish Gupta, Advocate with
Mr. Paras Kakkar, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by defendant No.4 against the concurrent judgments and decrees of the learned District Courts; whereby the suit for possession filed by the plaintiff/respondent no.1 herein, has been decreed by both the District Courts.

2. Brief facts of the case are that the plaintiff/contesting respondent No.1 has filed suit seeking possession of the suit property as described in the plaint. It is the pleaded case of the plaintiff that as per the Jamabandi for the year 2001-2002, plaintiff alongwith his uncles was owner of the land measuring 1K in Khasra No. 1405 to the extent of 1/4th share. It was pleaded that other co-sharers have sold their shares and vendees have taken possession and raised construction. Therefore,



purchasers are in exclusive possession of the property marked as ABCD. It was pleaded that the remaining property is marked as EFGB in the site plan and that plaintiff is entitled to recover the possession of the same. It was further pointed out that plaintiff had previously filed civil suit for permanent injunction and possession. The suit for possession was withdrawn on the statements of respondents No. 1 to 4 by reserving right to sue if the property in dispute was found part of khasra No. 1405. The suit for permanent injunction was continued and ultimately dismissed. The Appeal against the same was also dismissed. A week ago, after the dismissal defendants had raised boundary wall in the property marked as EFGB. Defendant No.5 had also taken illegal possession of part of the property of the plaintiff and raised construction. Accordingly, present suit for possession was filed on 15.05.2003.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge, Hoshiarpur had decreed the suit of the plaintiff vide judgment and decree dated 27.09.2012 as follows:

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“24. In view of my discussions made on the above said issues, the suit of the plaintiff succeeds and the same is hereby decreed with costs for possession of property marked as EFGB in the site plan annexure A bounded as East: Khasra No.1406 property in possession of Rohini Kumar and others, West: Part of Khasra No.1405 in possession of Rattan Chand, North: Road, South: Property in possession of Ruben situated on Fatehgarh Road, Opposite to DAV College Hoshiarpur which is part of Khasra No.1405, Khewat No.308, Khatauni No.331



revenue estate of Premgarh, H.B.No.247, Tehsil and District Hoshiarpur as per jamabandi for the year 2001-02. The defendants are given two months time to hand over the possession to the plaintiff from the passing of this judgment and decree and failing which the plaintiff shall be at liberty to take the possession of the suit property by filing execution through Court of law. Undisbursed amount if any be disbursed to the quarter concerned as per rules. Decree sheet be prepared and file be consigned to the record room."

4. The Civil Appeal filed by the defendants was dismissed by the learned Additional District Judge, Hoshiarpur vide judgment and decree dated 12.07.2017. Hence present Second Appeal by defendant No.4.

5. It is *inter alia* submitted by learned counsel for the appellant that it is an admitted fact on record that the plaintiff had previously also filed a civil suit in respect of the same property between the same parties and on the same cause of action and seeking the same relief. The said suit had merely been dismissed as withdrawn by the plaintiff vide order dated 03.04.1996, without liberty to file fresh suit. It is contended that therefore, the suit of the plaintiff was barred under Order 2 Rule 2 CPC; and was not maintainable and has been illegally and wrongly decreed by both the District Courts.

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

7. *Per contra*, learned counsel for the plaintiff/respondent No.1 opposes submissions advanced on behalf of the appellant and submits that no doubt, plaintiff had previously filed civil suit seeking permanent



injunction and possession. However, the said civil suit had been dismissed as withdrawn vide order dated 03.04.1996 with liberty to the plaintiff to file fresh suit in case the property in dispute is found to be in khasra No. 1405. It is submitted that therefore, the suit of the plaintiff was not barred under Order 2 Rule 2 CPC. Accordingly, dismissal of the appeal is prayed for.

8. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of plaintiff/respondent No.1.

9. It is undisputed fact on record that in respect of the present suit property, the plaintiff had previously filed suit for permanent injunction and possession against the present defendants. In the said suit, Defendants No.1, 2 and 4 had made statement dated 01.03.1996 Ex.P6 before the Civil Judge, Junior Division to the effect that *"I am raising construction in Kh. No.1405/1. If at all at the time of the decision, it is found that the construction in Kh. No. 1405, I will remove construction."*

10. Plaintiff had also made statement dated 01.03.1996 Ex.P6 before the learned Civil Judge, Junior Division, which reads as under:-

"I have heard the statement. I reserve my right to claim compensation for use and occupation if it is found that the property in dispute is found in Kh.1405."

11. Thereafter, the said civil suit was dismissed as withdrawn qua relief of possession vide order dated 03.04.1996 Ex.P8. Subsequently, suit qua relief of permanent injunction was also dismissed vide order dated



04.05.2000; and the appeal preferred by the plaintiff against the same was also dismissed by the learned Additional District Judge, Hoshiarpur vide order dated 27.03.2003.

12. From the above facts, it is clear that the suit of the plaintiff qua relief of possession was never adjudicated upon on merits of the matter; and had been simplicitor dismissed as withdrawn on the statement dated 01.03.1996 Ex.P6 made by the parties. In this view of the matter, it is clear that the suit of the plaintiff was not barred under Order 2 Rule 2 CPC. Thus, the sole argument made by learned counsel for the appellant in challenge to the concurrent decrees, is without merit.

13. Even otherwise, the learned District Courts have concurrently found that as per Jamabandi for the year 2001-2002 Ex.P10; and Jamabandi for the year 2006-2007 Ex.P11, plaintiff is shown to be owner in possession of the suit property to the extent of 1/4th share. Moreover, the defendants have specifically deposed that they have no right, title qua disputed khasra No. 1405. In fact, defendant No.1, while appearing as DW2 has specifically deposed that although he is in possession of Khasra No. 1405/1, but he does not know who owner of Khasra No. 1405 is, and he does not claim ownership over Khasra No. 1405.

14. The relevant findings of the learned Additional Civil Judge (Senior Division), Hoshiarpur contained in para 17 of the judgment dated 27.09.2012, relevant extract of which reads as under: -

“..... From the perusal of the jamabandies relied upon by the plaintiff Ex.P10 of the year 2001-02 shows that plaintiff is



owner of 1/4th share of the property in question. Plaintiff is shown to be owner in possession as per jamabandi Ex.P11 of the year 2006-07. The defendant has specifically deposed that they have no right or title over Khasra No.1405. The cross examination of DW2 Patras who has specifically deposed that he is in possession of Khasra No.1405/1 but he does not know who is owner of Khasra No.1405 and he does not claim his ownership in Khasra No.1405. Patras has also specifically deposed that when the Local Commissioner went to the spot for demarcation he was present personally and Saloni was also present. From the bare perusal of the jamabandi relied upon by the plaintiff i.e. Ex.P10 to Ex.P12 which shows the ownership of the plaintiff over the property in question. The property in question is part of Khasra No.1405. From the bare perusal of the report of the Local Commissioner Ex.P2, he has specifically deposed that the defendant has encroached the property in question and also raised construction by raising boundary wall. The learned counsel for the defendant has failed to extract anything material from the mouth of the court witness namely Tarlochan Singh, who was appointed as Ex 12 Local Commissioner. From the report of the Local Commissioner it is crystal clear that the defendants have encroached upon Khasra No. 1405 and he has effected the measurement at the spot as per High Court Rules and Orders and the instructions given by the Financial Commissioner with regard to the measurements. The site plan relied upon by the plaintiff as well as the defendant and the Aks Latha relied upon by the Local Commissioner they all tally with each other. The Local Commissioner who had demarcated the Khasra No. 1405 which shows that the report made by the Local Commissioner is correct.”

15. From the above facts, it was clear that defendants had encroached upon the suit property. In this view of the matter, suit of the plaintiff for possession was rightly decreed by both the District Courts.
16. Hence, present Second Appeal stands **dismissed**.
17. Pending applications, if any, stand disposed of.

10.03.2026

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No