



**106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1027-2020 (O&M)
Date of Decision:26.05.2026

MUKESH

...APPELLANT

Versus

ROHTASH AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ivneet Singh Pabla, Advocate
for the appellant.

PARMOD GOYAL, J. (ORAL)

Present appeal has been preferred by appellant-defendant No.1 being aggrieved by concurrent finding of facts recorded by learned Courts below vide impugned judgment and decree dated 30.09.2016 passed by learned Civil Judge (Junior Division), Bahadurgarh whereby suit for possession and permanent injunction preferred by respondents-plaintiffs was decreed and also by judgment and decree dated 16.08.2019 passed by learned Additional District Judge, Jhajjar whereby first appeal preferred by appellant-defendant No.1 was dismissed.

2. Respondents-plaintiffs had preferred suit for possession against defendants seeking possession of suit land shown with letters EFGH in the site plan attached with the plaint, allegedly comprised in khasra No.5316/823 and 5317/823 measuring 10 biswa situated at Preet Vihar area, Balor Road, Bahadurgarh. They had also sought permanent injunction seeking to restrain defendants from interfering with the ownership right of respondents-plaintiffs and claimed damages @Rs.2,000/- per month for

unauthorized use and occupation of vacant plot till delivery of possession.

3. Respondent-plaintiff No.1 claimed that they had purchased and sold lands duly is duly described in plaint. Sale was made through Arya Properties and none of the purchasers was known to him nor had they entered into an agreement to sell with them and had also not received any sale consideration from any of the purchasers. Land comprised in khasra No.5317/823(0-4) was purchased vide sale deed dated 27.01.1976. That respondent-plaintiff No.1 had purchased land comprised in khewat No.860/1, khatoni No.1508, khasra No.785(0-7) and 5316/823 (0-6) kitte 2 land measuring 0 bigha 13 biswas through sale deed bearing No.2039 dated 13.08.1997. Thereafter, he had constructed boundary walls around khasra No.5316/823/2(0-6) and 5317/823/1(0-4). That he had also constructed four rooms and bathroom in the property. It is the case of respondents-plaintiffs that he had never entered into any agreement to sell with anyone regarding khasra No.5317/823 measuring 0 bigha 4 biswa nor executed any sale deed in anybody's favour as respondent-plaintiff No.2 had already leased out the said khasra number in favour of Naresh son of Kedar Singh. Subsequently, respondent-defendant No.4 prepared a site plan and has carved out the colony in the name of his father and named it as Preet Vihar. It is asserted that Wazir Singh Rathee sold out plots in the colony to various purchasers but got the sale deeds signed through respondent-plaintiff No.1. That on 02.02.2009, respondent-plaintiff No.2 was informed regarding demolition of the boundary wall and collection of building material for raising construction and when respondent-plaintiff No.2 reached the spot, he found that Krishan Lal and his son had collected building material at the spot. Thereafter, they informed other side that the plot was purchased in the name

of Kaushalya Devi. The matter was reported to police, however, defendants succeeded in demolishing the wall and encroaching upon the plot owned by respondents-plaintiffs and therefore, suit for possession was preferred.

4. On notice, defendants had taken number of preliminary objections as regards to maintainability etc. It was asserted that respondent-plaintiff No.1 had sold the suit property to the father of appellant-defendant No.1 vide registered sale deed bearing No.1603 dated 31.08.1992 and possession of suit property was delivered to father of appellant-defendant No.1. It is asserted that present suit has been filed only to harass the defendants and to grab the suit property. That respondent-plaintiff No.1 was stated to be co-sharer to the extent of 2/5th share and respondent-plaintiff No.2 was co-sharer to the extent of 1/5th share in khasra No.822/2(0-19) and khasra No.5317/823 (0-4). That respondent-plaintiff No.1 had sold 10/57th share i.e. 3 biswas pukhta to Smt. Yashvanti Devi and Sh. Vijay Singh from Khasra No.822/2(0-19) vide sale deed bearing No.2521 dated 27.07.1992 and mutation No.15287 was sanctioned on 09.08.2004. That respondent-plaintiff No.1 had also sold 7/114th share i.e. 1 biswa pukhta from land comprised in khasra No.822/2 vide registered sale deed bearing No.2301 dated 15.10.1992 for which mutation No.9997 was sanctioned on 27.02.1993. It was also asserted that respondent-plaintiff No.1 had also sold 2/57th share i.e. 0 bigha 1 biswa from khasra No.822/2 vide registered sale deed No.2614 dated 04.12.1992, mutation No.9990 was sanctioned on 27.02.1993 and was left with no share in khasra No.822/2. It is asserted that respondent-plaintiff No.1 was not owner in possession of any share in khasra No.822/2 at the time of execution of sale deed No.1603 dated 31.08.1992 in favour of Ranbir Singh son of Ram Singh and was owner of share in khasra

No.5317/823(0-4) and had also mentioned dimensions as well as boundaries in sale deed No.1603 of said khasra number. It was the case of appellant-defendant No.1 that respondents-plaintiffs being owner of khasra No.5317/823 (0-4) had sold land measuring 100 sq. yards to the father of appellant-defendant No.1 and had duly mentioned the boundaries in the sale deed and had duly delivered the possession. However, in sale deed khasra number was wrongly mentioned as Khasra No.822/2 despite the fact that he was not owner in possession of said khasra number. That it was father of appellant-defendant No.1 who had constructed the boundary wall over the disputed property in year 1992. It is appellant-defendant No.1 who had become owner in possession of suit property after his father's death. The case of respondents-plaintiffs regarding ownership, possession and construction was stated to be wrong and was denied. The claim of respondents-plaintiffs that suit property was encroached on night of 08.02.2009 and 09.02.2009 was also denied. It was asserted that khasra No.5317/823 (0-4) was purchased by respondents-plaintiffs vide sale deed No.1095 dated 27.01.1976 and accordingly, dismissal of suit was prayed for.

5. From the pleadings of parties, following issues were framed:-

- i. Whether the plaintiffs are entitled for possession of suit property shown by letters EFGH in the site plan attached with the plaint? OPP
- ii. Whether the plaintiffs are entitled to the decree for permanent injunction as prayed for on the grounds mentioned in the plaint? OPP
- iii. Whether the plaintiff are also entitled to damages at the rate of Rs.2,000/- per month? OPP

- iv. Whether the suit of the plaintiff is not maintainable in the present form? OPD
- v. Whether the plaintiffs have no locus standi to file the present suit? OPD
- vi. Whether the suit is barred by limitation? OPD
- vii. Whether the plaintiffs are estopped from filing the suit by their own act and conduct? OPD
- viii. Relief.

6. From pleadings, it is clearly made out that on one hand, respondents-plaintiffs claiming that suit land comprised in khasra Nos.5316/823 and 5317/823 measuring 10 biswas is owned by respondents-plaintiffs which has been encroached by appellant-defendant No.1. On the other hand, it is the case of defendants that father of appellant-defendant No.1 had purchased the same vide sale deed bearing No.1603 dated 31.08.1992. From evidence it is made out that respondents-plaintiffs have succeeded in proving that they had purchased the suit land vide sale deed dated 27.01.1976 (Ex.PW4/B) and sale deed dated 13.08.1997 (Ex.PW4/C). Ownership of respondents-plaintiffs in fact is not being contested by appellant-defendant No.1. It is also not in dispute that respondents-plaintiffs had sold various plots out of khasra No.822/1 which they had purchased vide sale deed Ex.PW4/B. Reliance has been placed upon sale deed bearing No.1603 dated 31.08.1992 Ex.D2, wherein, father of appellant-defendant No.1 purchased plot measuring 100 sq. yards out of khasra No.822/2.

7. The simple case of appellant-defendant No.1 was that respondents-plaintiffs were not owner of khasra No.822/2 as they had already sold the entire land, in said land, therefore, in fact respondents-

plaintiffs had sold land comprised in khasra No.5317/823(0-4) vide sale deed dated 31.08.1992 (Ex.D2). It is the case of appellant-defendant No.1 that Ex.D2 goes to show that they had sold the land out of khasra No.5317/823(0-4), however, in sale deed it was wrongly mentioned as khasra No.822/2, and had claimed that the suit property is part of khasra No.5317/823 and has been purchased by them vide sale deed Ex.D2 dated 31.08.1992.

8. Both the Courts have concluded that recital of sale deed **Ex.D2** cannot be countered by oral evidence of appellant-defendant No.1 in view of Sections 91 and 92 of Indian Evidence Act, 1872. Admittedly, in the present case, sale deed Ex.D2 was not sought to be corrected by appellant-defendant No.1 right from its execution in year 1992 till filing of written statement in year 2009.

9. The learned Appellate Court has duly considered the factual aspects of present case as under:-

14. From the averments of the parties, the moot question which arises is whether the suit property is part of Khasra No. 822/2 or of Khasra No. 5317/823. The trial court had observed that the recital in the sale deed Ex.D2 cannot be rebutted by oral evidence of defendants in view of Section 91 and 92 of Evidence Act. I agree with the observations of the trial court. It has been specifically provided under Section 91 and 92 of Evidence Act that no person shall be permitted to lead oral evidence to the effect that the parties meant something different out of the facts mentioned in the document. Thus, the defendants cannot claim that the plot purchased by them vide sale deed Ex.D2 was part of Khasra No. 5317/823 and not of Khasra No. 822/2, especially when the defendants had not disputed the said sale deed executed in the year 1992 till filing of written statement in the present case in the year 2009-10.

When the defendants themselves have kept mum for such a long time and had not applied for any rectification in the sale deed Ex.D2 and not filed any counter claim even in the present suit, their version that Khasra No. 822/2 was wrongly recorded in sale deed Ex.D2, cannot be believed. Moreover as it is the defendants who had claimed that wrong Khasra Number was mentioned in the sale deed by the plaintiffs fraudulently, the burden was upon the defendants to prove the alleged fraud, which the defendants had failed to prove. Even otherwise, fraud in a civil case is to be proved like a criminal charge and specific instances of fraud must be pleaded and proved. The defendants had failed to plead and prove any instance of fraud.

15. The version of defendants is further falsified as the plaintiffs were not the owners of Khasra No. 5316/823 min (0-6) in the year 1992 when sale deed Ex.D2 was executed in favour of defendants as they had purchased the said land bearing Khasra No. 5316/823 (0-6) in the year 1997 vide sale deed Ex.PW3/A. Faced with this situation, learned counsel for defendants has relied upon law laid down in the case of Ajaib Singh vs. Saon Singh and others 1991 (1) S.L.J. 587 and contended that even if the plaintiffs were not having any title at the time of execution and registration of sale deed Ex.D2 and made representation that they are the persons having transferable interest therein, if they subsequently acquired the property, the transferee becomes entitled to it. He contended that on the basis of Section 43 of T.P. Act, the defendants acquired title in the suit property as the plaintiffs purchased the property later on vide sale deed Ex.PW3/A. It is not disputed that in case a person promises more than he can perform, than he must fulfill the promise when he gets ability to do so. However, this proposition of law is not applicable to the facts of the present case as the defendant has failed to prove that they had purchased the land out of Khasra No. 5316/823 (0-6) instead of Khasra No. 822/2.
16. Learned counsel for defendants has next contended that where

the Khasra Numbers of the suit property are disputed, its boundaries will prevail. He contended that in the sale deed Ex.D2, the boundaries of the plot purchased by them have been mentioned and those boundaries clearly matched with the boundaries of the suit property. He contended that this shows that the suit property is the same property which was purchased by the defendants vide sale deed Ex. D2. He placed reliance on citation in case of Babaji Dehuri and others vs. Biranchi Ananta and others 1996(2) L.J.R 72. However, perusal of the case file shows that even the boundaries of the suit property do not match with the boundaries given in the sale deed Ex.D2. In Ex.D2, the description of the plot is given as under:-

East: 16 feet wide street.

West: Plot of others

North: Plot of others

South: Plot of Yadram.

However, the site plan Ex.P1 shows that the suit property is although adjoining street on the eastern side but on all other three sides, there is property of vendors. The description of boundaries in the sale deed are also vague as plots of `others` have been shown in it and no name has been mentioned. Towards south, plot of Yadram has been shown but as per site plan Ex.P1, there is no plot of Yadram on the southern side of the suit property. Thus, on the basis of boundaries of the suit property also, it cannot be said that the boundaries of the suit property match with the boundaries given in Ex.D2.

17. The plaintiffs had proved on the case file the demarcation report Ex.PW5/A which was prepared by LC appointed in case titled `Rohtas vs. Kaushalya Devi` and as per the said demarcation report, there is encroachment of defendants over Khasra No. 823/2 and 823/1. The LC report has been assailed by the defendants by alleging that LC had neither issued any notice to them before visiting the spot and demarcating the suit property, nor the said LC was appointed in the present case, nor

he had conducted the demarcation as per the instructions of Financial Commissioner and no pucca points were fixed before conducting demarcation. However, I do not agree with contentions of learned counsel for defendants. In the demarcation report, the LC had taken Pucca points and as pucca houses were existing near the suit property, the points were taken from the said houses. The defendants had not taken any objections against the said report of LC and moreover, representative of defendant no. 3 was present at the time of demarcation as is clear from the memo of presence prepared by the LC (Ex.PW5/B). Thus, the trial court had rightly observed that the defendants are in illegal possession of the suit property. The plaintiffs were in possession of the suit property which is clear from copy of Khasra Girdawari Ex.P7 of the year 2009. As the plaintiffs have filed the suit for possession on the basis of their title, they are entitled to get back the possession of encroached portion. It may further be added that the plaintiff no. 2 had filed a complaint ExP2 under Section 447, 448, 452, 457, 458, 380, 323, 506 IPC Ex.P12 against the defendants with the same averments that defendants have encroached upon portion of the suit property. A civil suit was also filed by plaintiff no. 1 against Kaushalya Devi wife of Krishan Lal defendant with the same averments and the said suit was also decreed in favour of plaintiff No. 1 vide judgment and decree Ex.P13 and Ex.P14. All these documents show that earlier the plaintiffs were in possession of the suit property but later on the defendants had encroached upon portion of the same in the night of 08/09.02.2009.

18. Learned counsel for defendants has argued that even if it is believed that the sale deed Ex.D2 is in respect of Khasra No. 822/2, even then the plaintiffs, who had purchased plot in these numbers, become co-sharer in joint possession of the suit property. He contended that a co-sharer has no right to seek injunction against other co-sharers and on this ground, suit of

the plaintiffs is liable to be dismissed. He relied upon citation in case of Piru vs. Fakir Chand 2006 (2) L.A.R 370 and contended that sale of specific portion out of the joint land amounts to sale of share and thus, the plaintiffs as well as defendants have right in the suit property in equal manner as co-sharers. He contended that thus, suit of the plaintiffs was not maintainable. However, I find myself in total disagreement with the contention of learned counsel for defendants. Perusal of the documentary evidence, available on record, shows that Khasra No. 823(0-4) was part of Khewat No. 1632, Khasra No. 5316/823(0-6) was part of Khewat No. 860/1 as mentioned in sale deed Ex.PW3/A. Further the sale deed Ex.PW4/B shows that the Khasra No. 823 min (0-4) was part of Khewat No. 478. Thus, the suit property and the property purchased by the defendants vide sale deed Ex.D2 are parts of different Khewats and hence, the plaintiffs are not co-sharers with defendants in the suit property. Hence, the plea of defendants, that the suit of the plaintiffs is not maintainable, is devoid of any merit.

10. On consideration, I am in agreement with the conclusions drawn by learned Courts below. Both the Courts below have rightly concluded that the contents of sale deed cannot be disproved by oral evidence. I am also in agreement with conclusions drawn by learned Courts below that the description of property as given in Ex.D2 i.e. 16 feet wide street on eastern side, plot of others on northern and western side and plot of Yadram on southern side is a vague description of the property. On the other hand, site plan Ex.P1 shows that suit property has street on eastern side and it is the property of vendors on all other three sides. In sale deed plot of Yadram is shown in the southern side whereas, no such plot of Yadram is shown on southern side in Ex.P1. Thus, the description of property in Ex.D2 does not match with the description of the property being sought by

respondents-plaintiffs as shown in site plan Ex.P1. In fact there is no material available except for oral assertions that vide sale deed dated 31.08.1992, respondents-plaintiffs had sold land out of khasra No.5317/823(0-4). Rather ownership of respondents-plaintiffs is admitted as defendants also claiming through them on the basis of sale deed. Once, it is held that land sold to appellant-defendant No.1 vide sale deed dated 31.08.1992 is different than suit land, then the status and possession of appellant-defendant No.1 has to be held to be illegal against true owner.

11. In view of concurrent findings of facts based upon pleadings and evidence on record, no interference in present appeal is warranted. On one hand, respondents-plaintiffs have succeeded in proving that suit property is owned by them having been purchased by registered sale deeds. On the other hand, appellant-defendant No.1 had failed to prove that suit property was sold to them by respondents-plaintiffs vide registered sale deed Ex.D2, reliance upon which has been placed by them. Accordingly, present appeal is devoid of merits, hence dismissed.

12. Pending application(s), if any, stand disposed of.

26.05.2026
Ravinder

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No