2025:PHHC:138068

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1048-1999 (O&M)

Reserved on 26.09.2025
Date of decision: 01.10.2025

Babu Lal **...Appellant**

Versus

Manohar Lal and others ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. Adarsh Jain, Advocate for the appellant.

Mr. Arihant Jain, Advocate and
Mr. Kanish Jindal, Advocate
for respondents No.1 to 3.

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DEEPAK GUPTA, J.

The plaintiff is before this Court in this Regular Second Appeal challenging the reversal of the trial Court's decree. The trial Court had granted a decree of permanent injunction on 23.08.1996 in favour of the plaintiff, but the First Appellate Court allowed the defendants' appeal on 04.12.1998, reversed the trial Court's findings and dismissed the suit.

2. The trial Court record available on the DMS has been perused. For the sake of clarity, the parties will be referred to by the status in which they stood before the trial Court.

3. The plaintiff's case is that he has been the owner in possession of the suit property shown as letter "ABCD" on the site plan, situated within the Abadi Deh of village Hassanpur, since the time of his father. It is alleged that the plaintiff's father constructed a saar about fifty years ago and that the plaintiff subsequently raised a Nohra and constructed two Bitoras, one

Bonga and one Khor on the property for residential use. The municipal committee purportedly asserted ownership and filed a complaint under Sections 181/209 of the Municipal Act, 1973 before the Sub-Divisional Magistrate, Palwal, but that complaint was dismissed for want of sanction. The plaintiff contends that the defendants have no right in the suit property, and that they are attempting to dispossess him and demolish his constructions. Accordingly, he sought a decree of permanent injunction.

4. Defendants Nos.1–3 contested the suit, denying the plaintiff's title and possession. They contend that they are the owners of plot Khasra No.502/2 measuring 2 Kanal 4 Marla, by virtue of Mutation No.3109 sanctioned on 12.04.1990, and that the plaintiff has no connection with or possession of that plot. Their case traces title to old Khasra No.1193 min, originally allotted to Dayal Chand and subsequently sold in part to Thakur Dass and Bodhraj (½ share) and in part to Mool Chand (father of defendant No.1), Mohan Lal and Rijhu Ram (remaining ½). Thereafter, Thakur Dass and Bodhraj allegedly sold their ½ share to Mohan Lal and defendants Nos.2 and 3, and thus defendant Nos.1–3 claim to have become the owners of the entire plot now recorded as Khasra No.502/2. They further allege that, due to a clerical mistake by the consolidation authorities, their possession was not recorded initially; upon their application the matter was remanded to the Director of Consolidation and a spot inspection on 25.01.1990 affirmed their possession, following which Mutation No.3109 was sanctioned in their favour.

5. After framing issues and recording evidence, the trial Court decreed the suit. The trial Court found that although the plaintiff was not the owner, he was in possession of the suit property. It further found that defendant Nos.1–3 were the owners but could not dispossess the plaintiff except by due process of law. Accordingly, a decree of permanent injunction

was passed restraining the defendants from dispossessing the plaintiff except in accordance with law.

6. On appeal the First Appellate Court reversed the trial Court's findings, holding that the plaintiff failed to prove his possession of the suit property and failed to establish its identity with Khasra No.502/2 owned by the defendants. The Appellate Court further observed that, even if the plaintiff were in possession, an injunction in favour of a trespasser against the true owner could not be granted. For these reasons, the Appellate Court allowed the defendants' appeal and dismissed the plaintiff's suit.

7. Challenging the reversal, learned counsel for the appellant submits that the First Appellate Court mis-appreciated the evidence, as it was the plaintiff who was in possession of the suit property and the trial Court's finding on possession was erroneously reversed.

8. Having examined the record, this Court finds no merit in the appeal.

9. The observations made by the First Appellate Court while re-appreciating the evidence of the parties are significant and read as under:

> "16. It is worthwhile to mention here that Babu Lal respondent had expressed ignorance that old khasra number of the disputed property was 1193 min and now it is comprised in khasra no.502/2. On the other hand, DWI Dharam Pal has testified that new khasra No.502/2 of the property in dispute is owned and possessed by Manohar Lal defendant appellant, who has made installations thereon. It also cannot be lost sight of that the said witness has unambiguously deposed that the old khasra number of this property was 1193 min and new khasra number is 502/2. Assumingly, the plaintiff - respondent is in possession of the land in dispute, but it is well settled principle of law that an injunction cannot be granted in favour of trespasser against the true owner. However, it is Immaterial that a complaint filed by the Municipal Committee u/ss 181/209 of the Haryana

Municipal Act, 1973 was dismissed on 30.11.87.

17. It is worth highlighting that old khasra no.1193 Min measuring 0 Bigha 9 Biswas was allotted to Dyal Chand who later on sold the same to Thakur Dass and Bodh Raj to the extent of 1/2 share and the remaining half share to Mool Chand, Rijhu Ram and Mohan Lai. Accordingly, I have no hesitation to say that the plaintiff respondent has no nexus with the land in dispute. However, keeping in view the erroneous entry, the order of Director of Consolidation Ex.D.2 comes into play vide which an application made by Rijhu Ram and others, and the case was remanded to the Consolidation Officer with directions to allot the area to the applicants Rijhu Ram and others as per their entitlement. Resultantly, consolidation officer having made the spot inspection allotted the area measuring 2 Kanal 4 marlas comprised in khasra No.502/2 to Rijhu Ram and others and mutation No.3109 was sanctioned on 12.4.90. On the other hand, the plaintiff respondent has woefully failed to identify the suit land. Consequently, by no stretch of imagination, it can be said that he is in possession thereof.

18. It would be pertinent to note in the context as above discussed that Dharam Pal DW1 has emphatically stated that the land in question bears khasra No.502/2 which is owned and possessed by Manohar Lal defendant appellant, who raised construction thereon. It is also tremendously clear from the evidence of both the parties that the old khasra number of the disputed property was 1193 min and its new number is 502/2 which was allotted to Dyal Chand in lieu of old khasra number during consolidation. Ex.D5 mutation No.1894 vide which share was sold by Thakur Dass to Rijhu Ram, Mool Chand and Mohan Lal sons of Narain Dass and mutation Ex.D4 reflect that Dyal Chand sold his share to Thakur Dass and Rijhu Ram etc. It also cannot be lost sight of that Ex.D9 Jamabandi for the year 1969-70 also reflects that khasra No.1193 measuring 0 Bigha 9 Biswas was allotted to Dyal Chand who sold to Thakur Dass and others. Similarly, Ex.D.10 Jamabandi for the year 1989-90 shows that Rijhu Ram, Manohar Lal and Mohan Lal are owners in possession to the extent of 1/3 share each in the

land measuring 2 Kanal 4 marlas comprised in khasra No.502/2. With these observations, I apparently do find a merit in the contentions raised by Shri A.K. Mittal, learned counsel for the defendants- appellants whereas the contentions raised by Shri R.K.Goel, learned counsel for the plaintiff respondent are devoid of merit. Resultantly, I am inclined to the view that the judgment and decree vide dated 23.8.96 under attack are smacked of illegality and infirmity being palpably erroneous and the same hereby stand reversed."

10. The aforesaid findings recorded by the First Appellate Court are clearly findings of fact arrived at after due appreciation of the evidence led by both sides. This Court finds no perversity or misreading of evidence so as to warrant interference in second appeal.

11. In particular, the First Appellate Court has rightly noticed that the plaintiff failed to establish the identity of the property claimed by him. It has come on record that the land comprised in old Khasra No.1193 min was allotted to Dyal Chand and, upon subsequent transfers, stood vested in defendant Nos.1 to 3, who were recorded as owners in possession of new Khasra No.502/2 measuring 2 Kanal 4 Marla, vide Mutation No.3109 dated 12.04.1990. On the contrary, the plaintiff neither produced any documentary evidence nor sought demarcation to prove that the land alleged to be in his possession was distinct from the defendants' property.

12. Once the plaintiff failed to establish the precise identity of the suit land, no decree of injunction could be granted in his favour. It is well settled that an injunction cannot be granted to protect the possession of a person who is unable to prove a lawful or identifiable right in the property, particularly when the true owners stand established on record.

13. Accordingly, this Court finds no reason to interfere with the findings of the First Appellate Court, which are based on proper appreci-

ation of the material on record and do not suffer from any illegality or infirmity.

14. Consequently, the appeal is held to be devoid of merit, and stands dismissed. No order as to costs.

01.10.2025 **(DEEPAK GUPTA)**
Yogesh **JUDGE**

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