

(2000) 02 P&H CK 0123

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 645 of 2000

Krishan Chand

APPELLANT

Vs

Daropti

RESPONDENT

Date of Decision: Feb. 11, 2000**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 2 Rule 2(2), Order 2 Rule 2(3), Order 2 Rule 3

Citation: (2002) 2 CivCC 449 : (2001) 4 RCR(Civil) 691**Hon'ble Judges:** M.L. Singhal, J**Bench:** Single Bench**Advocate:** Sanjiv Bansal, for the Appellant; S.S. Dinarpur, for the Respondent**Final Decision:** Dismissed

Judgement

M.L. Singhal, J.

Smt. Dropti and others filed suit for possession of 2 marlas of land bearing khasra No. 55 khewat/khatauni No. 14/27 situated in village Sukhdaspur, Tehsil Jagadhari against Krishan Chand and Tara Chand on the allegations, that Surat Singh was the owner of the land. Smt. Dropti is his wife while Mam Chand, Sham Lal and Karam Chand are his sons. . It was encroached upon by the defendants. They prayed for possession after demolition of construction raised thereon. Another bara No. 56 belongs to defendants situated adjoining to the suit property towards east. Mam Chand son of Surat Singh filed suit for permanent injunction against the defendants previously. Shri B. Diwakar, Sub Judge, Jagadhari granted stay against the defendants restraining them from interfering in their actual and physical possession. They were also restrained from raising any construction in the suit property. In that suit, defendants and their counsel made statement that they had no concern with the suit land i.e. khasra No. 55 which belongs to the plaintiff. Suit was dismissed as infructuous in view of that statement. Despite that order and in the absence of the plaintiffs, defendants wrongly and illegally encroached two

marlas of land of khasra No. 55 which was in possession of the plaintiffs. They also raised some construction in the encroached portion. It was alleged in that plaint that defendants had no concern with the property in suit. They had no right to encroach upon khasra No. 55. Plaintiffs got demarcation through revenue officials in the presence of the defendants. On demarcation, it was found that 2 marlas of land of khasra No. 55 had been encroached upon by the defendants and included in khasra No. 56 belonging to the defendants. Defendants contested the suit urging that plaintiffs are neither owner nor in possession of the property in dispute bearing khasra No. 55. Previously filed suit for permanent injunction by Surat Singh was dismissed on 6.6.88 by Sub Judge, Jagadhari. Surat Singh is still alive. Plaintiffs are not legally entitled to file this suit for possession nor they have locus standi to file the suit, Bara No. 56 belongs to Krishan Chand defendant No. 1 who is owner in possession thereof. It was denied that plaintiffs were in possession of Khasra No. 55. Defendant Krishan Chand got demarcation of land bearing khasra No. 56 on 20.5.81. After demarcation had been obtained, the defendant forced and raised kotha in his own share of khasra No. 56. After dismissal of the previous suit, he completed that room and roof was put up. It was denied that the defendants have encroached any portion of khasra No. 55 or that they are in possession of any portion of khasra No. 55. It was denied that the defendants ever got demarcation in the presence of the defendants as no notice was given to them by the revenue officials who allegedly gave demarcation. On these pleadings of the parties, the following issues were framed :-

1. Whether the plaintiffs are owners in possession of the suit property ? OPP
2. Whether the defendants have illegally encroached upon the suit property ? OPP
3. If issue No. 1 and 2 are proved whether the plaintiffs are entitled for the possession of the suit land ? OPP
4. Whether the plaintiffs have no locus standi to file the present suit ? OPD
5. Whether the suit is not maintainable ? OPD
6. Relief.

2. Vide order dated 14.1.97, Civil Judge (Junior Division), Jagadhari decreed the plaintiffs suit for possession of 2 marlas of land out of khasra No. 55 which has been encroached upon by the defendants in view of her finding that they have encroached upon 2 marlas of land out of khasra No. 55 belonging to the plaintiffs illegally.

3. Aggrieved by this order dated 14.1.97 of Civil Judge (Junior Division), Jagadhari, defendants went in appeal. Appeal was dismissed by Additional District Judge, Jagadhari vide order dated 24.1.2000. Still not satisfied defendants have come up in further appeal to this Court.

4. It has been submitted by the learned counsel for the appellants (defendants) that this suit is barred under Order 2 Rule 2(2) and (3) CPC. Surat Singh respondent previously filed suit for permanent injunction against the appellants restraining them from interfering in his possession over bara banjar Karim measuring 19 marlas comprising khewat khatauni No. 14/27 khasra No. 55 situated in village Sukhdaspur, Teshil Jagadhari, District Ambala Hadbast No. 442 vide jamabandi for the year 1981-82. Appellants filed written statement to that suit on 17.2.88 pleading that they had raised construction of one pucca kotha in their own land bearing khasra No. 56 prior to the filing of the suit and only roof of the said kotha remains to be constructed. It was also pleaded that the appellants have no concern whatsoever with the land of the respondents bearing khasra No. 55. On 6.6.88, the trial Court recorded the statements of the appellants. In view of the statements made by the appellants in that suit, that suit was dismissed as infructuous. Respondents did not make any prayer for demolition of the pucca kotha nor amended their suit asking for demolition of the pucca kotha. They filed fresh suit for possession of 2 marlas of land comprising khewat Khatauni No. 14/27 khasra No. 55 encroached upon by the defendants wrongly and illegally in the absence of the plaintiffs by demolishing any type of construction or structure over there. It was submitted that the question of maintainability of this suit was specifically raised in the written statement. Issue was framed regarding the maintainability of the suit. It was wrongly held by both the courts below that the suit for possession was maintainable. It was submitted that suit for possession was barred by the provisions of Order 2 Rule 2(2) and (3) CPC. It was submitted that on the same cause of action, the defendants cannot be vexed twice by two separate suits. Surat Singh did not seek amendment of the plaint nor did he seek the permission of the court to institute fresh suit. Subsequent suit was hit by the provisions of Order 2 Rule 2 CPC.

5. Suffice it to say, the subsequent suit for possession was not barred by Order 2 Rule 2 CPC because in the previous suit, Krishan Chand and Tara Chand defendants had made joint statement to the effect that they had no concern with khasra No. 55 nor they had ever interfered in its possession. If that was so, how was this suit for possession barred under Order 2 Rule 2 CPC. In the present suit for possession, the plaintiffs had pleaded that in the previous suit Krishan Chand and Tara Chand and their counsel had made statement that they had no concern with the suit land i.e. khasra No. 55 which belongs to Surat Singh. Defendants Tara Chand and Krishan Chand wrongly and illegally encroached upon 2 marlas of land and included it in their adjoining khasra No. 56 which belongs to them and raises some construction on the portion encroached upon wrongly and illegally by them. That means, this suit for possession was based on different cause of action. In the previous suit, there was only apprehension of encroachment. That apprehension was over as soon as Krishan Chand and Tara Chand made statement that they had nothing to do with khasra No. 55 and that khasra No. 55 belongs to Surat Singh and in view of that statement. Surat Singh withdrew that, suit for permanent injunction. Cause of action

for possession arose when Krishan Chand and Tara Chand encroached upon some area of khasra No. 55 and included it in khasra No. 56 and raised construction thereon. Suit based on separate cause of action is not barred under Order 2 Rule 2 CPC.

6. Both the courts below have concurrently found that Krishan Chand and Tara Chand have encroached upon 2 marlas of land of khasra No. 55 and included it in their adjoining khasra No. 56, on consideration of the demarcation report. While arriving at this findings, they relied upon the statement of Jagdish Ram, Patwari Halqa who stated that on 22.6.88, he was accompanying Babu Ram Kanungo for demarcation of Khasra No. 55 and 56. At the time of demarcation, many people of the village were present. Both the parties were available at the spot and the demarcation report was thumb marked by them Ex.PW1/A. With the said demarcation report was attached Ex.PW2/B which is Naksha Tafwat, Finding of fact arrived at by the courts below on consideration of evidence cannot be interfered with in second appeal unless there is no evidence to sustain that finding of fact or that finding of fact is based on irrelevant or inadmissible evidence.

7. For the reasons given above, this appeal fails and is dismissed in limine.

8. Appeal dismissed