

**(2012) 02 P&H CK 0302**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 970 of 2012 (O and M)

Kashmir Singh and others

APPELLANT

Vs

Sarabjit Singh and another

RESPONDENT

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**Date of Decision:** Feb. 28, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, 27

**Citation:** (2012) 167 PLR 22

**Hon'ble Judges:** G.S. Sandhawalia, J

**Bench:** Single Bench

**Advocate:** M.S. Sidhu, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

G.S. Sandhawalia, J.

The present regular second appeal has been filed by the LR's of the defendant who are aggrieved against the concurrent findings of the Courts below whereby the suit for permanent injunction of the plaintiffs has been decreed. The plaintiffs filed the suit for permanent injunction whereby they sought injunction that the defendant should be restrained from dispossessing the plaintiffs and from harvesting the wheat crops sown by them in the suit land measuring 120 kanals 6 marlas, details of the same is given in the heading of the plaint which is situated in Village Bhainiya, Tehsil Ajnala, District Amritsar as per jamabandi for the year 2003-04.

2. The plaintiffs alleged that they were jointly cultivating the suit property and made the suit land fit for cultivation after spending huge amount of money and were in possession of the same. The land is situated across Indo Pak border and identity cards have been duly issued to the plaintiffs by the Border Security Force for cultivating the land during day time under the supervision of BSF. The averments were that the defendant was earlier helping the plaintiffs in cultivating the suit land on the payment of some of the crops to the defendant and the entries in the

revenue record are in the name of the plaintiffs. It is alleged that the defendant, in connivance with some of the BSF officials wanted to dispossess the plaintiffs and thus, injunction was prayed for.

3. The defendant, in his written statement, took the plea that the plaintiffs were estopped as they had relinquished their possession in favour of the defendant vide agreement to sell dated 19.06.2006 and the defendant was in possession, and therefore, the plaintiffs could not claim the relief of injunction. The land was owned by the Forest Department and it was alleged that khasra girdawari had been wrongly recorded. The defendant also filed a counter-claim for relief of injunction by the plaintiffs on the ground that plaintiffs had delivered possession to the counter-claimants and they received a sum of Rs. 3,06,000/- and had nothing to do with the suit property and the plaintiffs were trying to take advantage of their name in the revenue records, and accordingly, prayed that the counter-claim be decreed and permanent injunction should be granted. The counterclaim was objected to on the ground that the possession of the suit land was never delivered and the defendant had failed to pay the balance amount of Rs. 2,00,000/- as only a sum of Rs. 1,06,000/- had been paid and the agreement remained unexecuted.

4. On the basis of the pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs are in possession of the suit property? OPP
2. If issue No.1 proved, whether the plaintiffs are entitled to relief of permanent injunction, as prayed for? OPP
3. Whether the suit is not maintainable in its present form? OPD
4. Whether plaintiffs have no locus standi to file the present suit? OPD
5. Whether plaintiffs are estopped by their act and conduct to file the present suit? OPD
6. Whether the plaintiffs have executed the agreement to sell dated 19.06.2006 in favour of the defendants. If so its effect? OPD
7. Whether the counter claimant is entitled to relief of permanent injunction? OP. counter claimant
8. Whether the counter claim is not maintainable? O. counter claimant
9. Whether counter claimant has no locus standi to file the counter claim? O. counter claimant
10. Whether the counter claimant has no cause of action to file the counter claim? O. counter claimant
11. Whether the counter claimant is estopped by his own act and conduct from filing the counter claim? O. counter claimant

12. Whether the counter claim is not properly valued for the purpose of court fee? O. counter claimant

13. Relief.

5. The plaintiff examined 3 witnesses whereas the LRs of defendant also examined 3 witnesses.

6. After taking into account the evidence on the record, the trial Court came to the conclusion that the revenue record depicted the entry of the plaintiff and merely because there was an agreement in favour of the defendant, it could not be held that they were in possession and also relied upon the judgment of the Hon"ble Supreme Court in Avinash Kumar Chauhan v. Vijay Krishna Mishra, AIR 2009 S.C. 1489(2009) 2 S.C.C. 532 to repel the submission that possession had been delivered as per the recitals in the agreement. It was held that the agreement had to be registered, and therefore, not being registered it could not be considered in evidence. It was also noted that remedy of specific performance had not been availed of and no suit had been filed. Accordingly, it was held that the plaintiffs were entitled for the relief of permanent injunction under issue No.2 and the plaintiffs had locus standi to file the suit and the suit was maintainable and there was no estoppel against the plaintiffs. The execution of the agreement inter se the parties was also noticed that the plaintiff, Sarabjit had entered an agreement and as per the revenue records, he was only in possession of land measuring 80 kanals 16 marlas whereas the balance land measuring 39 kanals 14 marlas was in possession of plaintiff No.2, Jugraj Singh as per jamabandi for the year 2003-04, and therefore, plaintiff No.2 being not a signatory to the agreement, was not bound by the agreement. Accordingly, it was held that in view of the judgment in Avinash Kumar Chauhan (supra), the delivery of possession did not stand proved and thus they were not entitled for injunction in their counter-claim. It was also held that the defendant not being in possession of the suit land, had no locus standi to file the counter-claim and it was not maintainable and was accordingly dismissed. Accordingly, the suit was decreed vide judgment and decree dated 13.10.2010. The LRs of defendant filed an appeal before the lower appellate Court which has been dismissed on 19.01.2012 and resultantly, the present regular second appeal has been filed. Along with the present appeal, an application for bringing on record additional evidence under Order 41 Rule 27 of the CPC to place on record the report of the Halqa Patwari who inspected the site on 29.10.2010 and made a report on 28.11.2011 that the defendant-appellants were in possession of the land. Accordingly, it is submitted that the findings of the Courts below are not correct and physical possession is with the present appellants. Reliance has been placed upon judgment of this Court in Kasturi Lai v. Smt. Kaushalya Devi and others, (2010-3) 159 P.L.R. 569 to contend that the report should be called for to find out as to who is in possession. The said submission are not acceptable especially in a regular second appeal. Once the suit for injunction had been filed and even the counter-claim had

been preferred by the defendant-appellants, it was for them to stand on their legs and bring evidence on record to show possession of the land in dispute. The provisions of Order 41 Rule 27 of the CPC provides exceptions in which the additional evidence are to brought on record and the present case does not fall within the said parameters. Even otherwise, the report was prepared on 28.11.2011 and no effort was made to place this report or file an application before the lower appellate Court to this effect. There are concurrent findings of the Courts below that the land belongs to the Forest Department and, therefore, the agreement in favour of the defendant was only regarding possession and could not have been enforced as title was not with the plaintiffs. The revenue record which has been examined by the Courts below show that jamabandi for the year 2003-04 (Exhibit P1) and khasra girdhawari for the crops of sauni 2004 and sauni 2006 (Exhibit P2) go on to show that the possession is with the plaintiffs. Once the entries in the jamabandi/revenue record which is a rebuttable presumption are in favour of the plaintiffs and even the appellants have failed to rebut that presumption and bring on record any evidence to show that they have got possession in lieu of the agreement. No fault can be found with the findings recorded by the Courts below regarding the grant of injunction to the plaintiffs and the declining injunction to the counter claimants. No question of law much less any substantial question of law arise for consideration. Accordingly, the present regular second appeal is dismissed and that of the Courts below is upheld.