

**IN THE COURT OF VIKAS VERMA, CIVIL JUDGE (JUNIOR
DIVISION), PANIPAT (UID No. HR-0553).**

CIS No.: CS-1372-2017

Civil Case No. :CS-214-2017

Date of Instt.: 19.12.2017

Date of Decision: 13.12.2024

1. Ram Phal aged about 63 years,
2. Jagdish aged about 61 years, both sons of Shri Pali Ram,
3. Ram Pati daughter of Balwant, aged about 58 years,
4. Bimla aged about 55 years, daughter of Shri Dei Chand resident of Village Kurana Tehsil Israna Distt. Panipat.

.....Plaintiffs.

Versus

1. State of Haryana through Collector, Panipat.
2. B.D & P.O. Israna Tehsil Israna Distt. Panipat.
3. Gram Panchayat Kurana Tehsil Israna Distt. Panipat through its Sarpanch.

..... Defendants.

**SUIT FOR PERMANENT INJUNCTION & MANDATORY
INJUNCTION AS A CONSEQUENTIAL RELIEF.**

Present: Shri Tejbir Deswal, Advocate for plaintiffs.
Shri Neeraj Kumar, Advocate for defendant No. 1.
Shri B.S. Kharb, Advocate for defendants No. 2 & 3.

JUDGMENT:

1. The plaintiffs have filed the present suit requesting for granting of a decree of permanent injunction and mandatory injunction as a consequential relief thereof against the defendants.

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Plaintiffs' case in plaint: -

2. The facts as averred by the plaintiffs in their plaint are that the defendants nos. 1 and 2 are Govt. employees and they are acting against the plaintiffs at the instance of defendant no. 3. Hence the requisite notice u/s 80 CPC is necessary prior to institution of the suit against a government employee. But the relief claimed by the plaintiffs is of an urgent nature. If the notice u/s 80 CPC is served upon the defendants nos. 1 and 2, then the suit would become in- fructuous and the plaintiffs would suffer irreparable loss and injury and injustice would be caused to him. So, the separate application u/s 80(2) CPC is being filed along-with the present plaint for seeking permission to institute the present suit and for dispensing with the requisite notice. The defendant no. 3 is a cooperative body. That the plaintiffs are the owners in possession of the house marked by letters CDEF along-with open space marked by letters ABCD shown red in the site plan attached, since the time of their forefathers. That on the western side of the house of the plaintiffs there was a well for the last about 300 years ago and the villagers used to take water from the said Well since the time immemorial. The forefathers of the plaintiffs had constructed the residential house marked by letters CDEF leaving the space marked by letters ABCD shown red in the site plan out of their self-owned property for their personal use i.e. to park tractor trolly, buggi and for tethering cattle etc. At that time the forefathers of the plaintiffs had affixed small bricks on the space marked by letters ABCD and since about

20 years ago the plaintiffs had affixed big bricks on the said space left by their forefathers, which was owned and possessed by the plaintiffs. That the defendants have no right title or interest to interfere in the peaceful possession of the plaintiffs over the vacant space owned and possessed by the plaintiffs, marked by letters ABCD shown red in the site plan attached as the said space is owned by the plaintiffs and was left vacant only to park the tractor-trolley and buggies etc. and to tether the cattle etc. That about 10-15 years ago, the defendant no. 3 had constructed Gali by affixing inter-locking tiles, after demolishing the bricks, on the northern side of the vacant space marked by letters ABCD without interfering in the peaceful possession of the plaintiffs over the said space. That on 21.09.2017 the defendant no. 3 along-with JCB Machine came over the spot and demolished the wall of the well, installed on the eastern side of the house of the plaintiffs and affixed the inter-locking tiles on the surrounding area of the well and threatened the plaintiffs also to affix interlocking tiles on the space owned and possessed by the plaintiffs marked by letters ABCD shown red in the site plan, in near future after finding suitable opportunity. That the Sarpanch of the Gram Panchayat has a jealousy with the plaintiffs as the plaintiffs had opposed the Sarpanch at the time of Panchayat election. On the next day, the plaintiffs along-with some respectables of the village approached the defendant and requested them not to interfere in the peaceful possession of the plaintiffs over the vacant space marked by letters ABCD but the defendants did not accede

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the genuine request of the plaintiffs and are adamant to affix the tiles on the above space marked by letters ABCD shown red in the site plan attached. The said threat is imminent and is still continuing. That in case the defendants succeed in affixing tiles on the vacant space marked by letters ABCD shown red in the site plan attached, then the plaintiffs will suffer irreparable loss and injury which can-not be compensated in terms of money, but on the other hand, if the defendants are restrained from doing so, they will lose nothing. That during the pendency of the above titled suit, the defendants have changed the nature of the suit property forcibly and illegally and removed the water pipe affixed in the property marked by letters ABCD shown red in the site plan and also affixed the tiles over the space marked by letters ABCD and also raised construction of a wall over the space marked by letters ABCD forcibly and illegally in violation of the status quo order dated 06.01.2018 passed by the Hon'ble Court knowingly and intentionally. That in the above noted case on 06.01.2018, the Hon'ble Court after hearing the counsels for both the parties, directed both the parties to maintain status quo till the next date of hearing i.e. 10.01.2018. The defendants were fully aware of the orders of maintaining status quo passed by the Hon'ble Court but the defendants continued to extend the threatening to interfere in the peaceful possession of the plaintiffs and to encroach upon the property owned and possessed by the plaintiffs marked by letters ABCD illegally and unlawfully. In the mid night of 16/17.01.2018 the defendants along-with 18-20 persons came

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over the suit property and removed the water pipe affixed in the property marked by letters ABCD in the site plan. Thereafter on 02.02.2018, the defendants along-with 8-10 laborers and cemented tiles (bricks) sand and cement came on the disputed property marked by letters ABCD with an intention to affix tiles on space marked by letters ABCD and to raise wall in the shape of permanent construction on the property marked by letters ABCD. The plaintiffs requested the defendants not to commit any kind of encroachment over the property in dispute and at that time the plaintiffs and the son of the plaintiff no. 1 immediately went to the police station and told the whole story to the SHO Madlauda and showed him the orders of status quo passed by the Hon'ble Court. The plaintiff no. 1 and his son also requested the SHO to visit the suit property and to stop the on-going construction by the defendants but he refused to do any-thing and told the plaintiffs to approach the Hon'ble Court by filing the contempt application. In the meantime, the defendants affixed the tiles over the space marked by letters ABCD in ultra violation and disregard of the order of maintaining status quo passed by this Hon'ble Court. The defendants have willfully and intentionally violated the order dated 06.01.2018 for maintaining status quo passed by this Hon'ble Court with impunity. The defendants have openly declared that court cannot do anything against them. By willfully and intentionally violated the order dated 06.01.2018 passed by the Hon'ble Court. The defendants have made themselves liable to be punished under the provisions of order 39 rule 2-A read with section

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151 CPC. The plaintiffs filed the contempt application before the Hon'ble Court against the defendants and the same is fixed for 15.02.2023. That thereafter, on 11.01.2019 during the pendency of the first contempt application the defendants along-with 8-10 laborers and cemented tiles (bricks) sand and cement came on the disputed property marked by letters ABCD with an intention to raise construction of the wall on space marked by letters ABCD. The plaintiffs requested the defendants not to raise any construction and to commit any kind of encroachment over the property in dispute and at that time the plaintiffs immediately went to the police station and told the whole story to the SHO Madlauda and showed him the orders of status quo passed by the Hon'ble Court. The plaintiff no. 1 and his son also requested the SHO to visit the suit property and to stop the on going construction by the defendants. Thereafter, the Incharge of the Police Post Urlana Kalan came over the spot and stopped the construction work being carried out by the defendants. Thereafter, when the plaintiffs requested to Incharge Police Post Urlana Kalan to take legal action against the defendants, but he refused to do anything and told the plaintiffs to approach the Hon'ble Court by filing the contempt application. In the mean-time, the defendants raised the construction of a wall over the space marked by letters ABCD in ultra violation and disregard of the order of maintaining status quo passed by 1 this Hon'ble Court. The photographs of the construction raised by the defendants are attached herewith. The defendants have willfully and intentionally violated the order dated

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06.01.2018 for maintaining status quo passed by this Hon'ble Court with impunity. The defendants have openly declared that court cannot do anything against them and also threatened to kill the plaintiffs in case the plaintiffs take any action against them. The said threat is imminent and is still continuing. The defendants by willfully and intentionally again violated the order dated 06.01.2018 passed by the Hon'ble Court. The defendants have made themselves liable to be punished under the provisions of order 39 rule 2-A read with section 151 CPC. The plaintiffs filed the contempt application before the Hon'ble Court against the defendants and same is fixed for 15.02.2023. The plaintiffs requested the defendants several times to remove their illegal encroachment from the suit property of the plaintiffs but the defendants have not been paying any heed on the request of the plaintiffs and are prolonging the matter under one pretext or the other knowingly and intentionally. That no similar suit between the same parties is pending in any court through-out India. The plaintiffs are filing the present suit in this Hon'ble Court for the first time only. That the cause of action arose in favour of the plaintiffs and against the defendants firstly on 21.09.2017 and demolished the wall of the well, installed on the eastern side of the house of the plaintiffs and affixed the inter-locking tiles on the surrounding area of the well and threatened the plaintiffs also to affix interlocking tiles on the space marked by letters ABCD shown red in the site plan, in near future after finding suitable opportunity and finally on 15.12.2017 when the defendants collected

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inter-locking tiles near the suit property in order to affix the same on the vacant space marked by letters ABCD shown red in the site plan attached. It is, therefore, prayed that a decree for permanent injunction, restraining the defendants forever from interfering in the peaceful possession of the plaintiffs over the space owned and possessed by the plaintiffs marked by letters ABCD shown red in the site plan attached and also restraining the defendants for ever from affixing tiles on the above space marked by letters ABCD shown red in the site plan attached, 1 situated within the abadi deh of village Kurana Tehsil Israna Distt. Panipat which is owned by the plaintiffs, with mandatory injunction directing the defendants to remove their entire illegal construction/encroachment from the suit property of the plaintiffs illegally done by the defendants during the pendency of the suit in violation of the status quo order dated 06.01.2018 1 passed by the Hon'ble Court and further directing the defendants to restore the suit property in the same position as was earlier at the time of filing the suit, fully detailed in the headnote of the plaint, be passed in favour of the plaintiffs and against the defendants with costs. Any other relief to which the plaintiffs is found entitled may also be granted.

Defendants' defence in Written Statement: -

3. Notice of this suit was served upon the defendants. Defendants No. 1 to 3 appeared before the court and had filed their joint written statement whereby they rebutted the present suit of the plaintiff by taking preliminary objections that the suit land marked by letters ABCD in

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site plan submitted by plaintiffs is the part and parcel of the street and site plan submitted by the plaintiff is fake same is not as per actual position on spot. That the plaintiffs are residing in their residential house, which was constructed more than 40 years back. That the plaintiffs have no right, title or interest with the suit property marked by letters ABCD, as per definition of Punjab village Common Land (Regulations) Act, 1961, if a person is residing with his family after constructing Pakka house within the area of Abadi Deh that property vest in proprietor and the said person be deemed as owner and if the suit property is laying vacant in Abadi Deh same is common property and vest in Gram Panchayat. That the suit property marked by letters ABCD is part and parcel of the street and same is used by the habitants of village Kurana as per their necessity. This property is common property. That the plaintiffs are neither owners nor in possession nor have any concern with the suit property in any manner. That the present suit filed by the plaintiffs with a bad intention just to harm and harass answering defendants. That the Gram Panchayat is constructing the pakka street, because the waste water is stored in the middle of the street due to no proper level of following of the waste water. Due to storage of the waste water in the middle of the street, the habitants of village Kurana are suffering an irreparable loss, mentally pain and agony. That the Gram Panchayat is constructed the pakka street as per demand of the habitants according to provision of law/ as per instructions of Haryana Government. That no urgency involved in the present suit filed

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by the plaintiffs with abuse process of law against the provision of law. That the suit of the plaintiffs is not maintainable in the present form and is liable to be dismissed. That the plaintiffs have no cause of action to file the present suit against the answering defendants. That the plaintiffs have no irreparable loss, balance of convenience, prima facie case and the suit is liable to be dismissed. That the suit property is used by the habitants as a street since the existence of village Kurana and this property is common property. That the suit of the plaintiffs is false, bogus, frivolous grounds and suit of the plaintiff is liable to be dismissed under the provisions of 35- A of CPC. That the suit land is owned by Gram Panchayat and reserved for the benefit of village community. That the plaintiff is not entitled of any kind relief as prayed in the present suit. There is no exclusive possession of the plaintiff over the land of Gram Panchayat to show the prima facie case and the suit is liable to be dismissed. That the suit of the plaintiff is abuse the process of joinder and mis-joinder. Hence the suit is liable to be dismissed. That the plaintiff has not come clean hands before this Hon'ble court and suppressed the true and material facts. That the illegal encroachment was removed after adopting the procedure of law and letter bearing No.4163 dated 07.12.2017 and 4050 dated 19.12.2017 and letter dated 02.01.2018 were written by Block Development Panchayat Officer Israna to SHO of P.S. Madlauda District Panipat. Copy of letters are attached herewith. That the possession was taken by the Gram Panchayat in presence of the respectable persons of

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Village Kurana and same was duly signed by the then Sanpanch, Panchs and other persons. That an application was also moved by the plaintiff before Block Development & Panchayat Officer and Sarpanch and same was duly marked on 17.01.2018 and copy of the same is attached herewith. That after taking the possession from the plaintiffs and other mischievous persons Gram Panchayat is owner in possession of the suit land and is managing the same. That suit of the plaintiff is barred by the provision of Haryana Panchyati Raj Act. That the suit of the plaintiff is also barred by the provision of rule 6 of Punjab Village Common Land Act 1964 as applicable in Haryana. That the Gram Panchayat is competent to manage the land of Gram Panchayat in large benefit of the inhabitants of village/ citizens of India. The rule 3 of Punjab village common land Act. That no notice was served upon the Gram Panchayat U/s 204/205 before filing the present suit which is mandatory. **On merits**, defendants no. 1 to 3 rebutted the present suit & submitted that Para No.1 of the plaint is regarding the employment of the defendants No.1 & 2 is matter of record. That the defendant No.3 is the elected body. That no urgency involved in the present suit and nothing disclosed by the plaintiffs in this para for exemption of the service of the legal notice, which is mandatory by law. Hence the story mentioned in this para is bundle of lie and same is created only for filing the present suit with a bad intention just to harm and harass the answering defendants. Plaintiffs are neither owner nor in possession over the property marked by letters ABCD. This land is part and parcel of

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the street remaining land mentioned in site plan marked by letters CDEF is used by the plaintiffs after constructing their residential house. That Para No. 3 of the plaint regarding existence of Well nearby the house of the plaintiff is matter of record. Rest of the para is wrong and hence denied that the suit property marked by letters ABCD is the property of the plaintiffs. This property is ownership of Gram Panchayat. The story of the mentioned in this para is false and complete reply of this para is given in above paras/preliminary objections. Gram Panchayat construct/repair the street as per demands of the habitants, but plaintiffs are intentionally damaging the street with a bad intention just to grab the area of the street after storing the waste water in the middle of the street. No occurrence took place on 21.09.2017 between the plaintiffs and answering defendants. Story mentioned in this para is false. Plaintiffs are only upon the property marked by CDEF not upon the ABCD. ABCD is the part of the street and same used by the habitants as street. The Gram Panchayat is competent to Manage the suit property being the owner. Jurisdiction of this Hon'ble Court is barred. No cause of action in favour of the plaintiffs and against the answering defendants. That, Para No.11 of the plaint regarding the situation of the property is matter of record and the Hon'ble court has got no jurisdiction to try and entertain and decide the present suit. No proper court fee has been affixed on the plaint. It is, therefore, prayed that in view of the above said circumstances, the suit of the plaintiff may kindly be dismissed, in the interest of equity and natural justice.

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Replication: -

4. The plaintiffs file replication to the Written Statement filed by the defendants no. 1 to 3 and stated in reply to preliminary objections that It is wrong to allege that the suit land marked by letters ABCD in the site plan submitted by the plaintiffs is the part and parcel of the street and the site plan submitted by the plaintiffs is false and the same is not as per actual position on the spot. In fact that the suit land marked by letters ABCD in the site plan submitted by the plaintiffs is the not the part and parcel of the street and the site plan submitted by the plaintiffs is not false and the same is as per actual position on the spot. It is wrong to allege that the plaintiffs have no right, title or interest with the suit property marked by letters ABCD, as per definition of Punjab Village Common Land (Regulations) Act, 1961. In fact, the plaintiffs have every legal right, title and interest with the suit property marked by letters ABCD, as the suit property is being utilized by the plaintiffs for the last so many years. It is wrong to allege that the suit property marked by letters ABCD is part and parcel of the street and the same is being used by the inhabitants of the village Kurana as per their necessity and this property is common property. In fact, the suit property marked by letters ABCD is not a part and parcel of the street and the same is not being used by the inhabitants of the village Kurana as per their necessity and this property is not a common property. The said property is being utilized by the plaintiffs for the last so many years. It is wrong to allege that the plaintiffs are neither

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owners nor in possession nor have any concern with the suit property in any manner. In fact, the plaintiffs are owners in possession of the suit property and they every concern with the suit property. It is wrong to allege that the present suit filed by the plaintiffs with a bad intention just to harm and harass the defendants. In fact, the present suit has not been filed by the plaintiffs with any bad intention as the plaintiffs do not want to cause harm and harass the defendants. It is wrong to allege that the Gram Panchayat is constructing pucca street to level the road and due to storage of waste water in the middle of the street, the inhabits of the village Kurana are suffering an irreparable loss, mental pain and agony. In fact, no water is storage in the street and the inhabits of the village Kurana are not suffering any irreparable loss, mental pain or agony. It is wrong to allege that the Gram Panchayat has constructed the pucca street as per demand of the inhabitants according to provisions of law/as per instructions of Haryana Govt. In fact, no demand has been raised by the inhabitants of the village to construct the pucca street. It is wrong to allege that no urgency involved in the present suit filed by the plaintiffs, with abuse process of law against the provisions of law. In fact, there was urgency in filing the present suit by the plaintiffs and the present suit has not been filed against the provisions of law. The relief claimed by the plaintiffs is of an urgent nature. If the notice u/s 80 CPC is served upon the defendants nos. 1 and 2, then the suit would become in-fructuous and the plaintiffs would suffer irreparable loss and injury and injustice would

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be caused to him. So, the separate application u/s 80(2) CPC is being filed along-with the present plaint for seeking permission to institute the present suit and for dispensing with the requisite notice. It is wrong to allege that the suit of the plaintiffs is not maintainable in the present form. In fact, the suit of the plaintiffs is fully maintainable in the present form. It is wrong to allege that the plaintiffs have no cause of action to file the present suit against the defendants. As the forefathers of the plaintiffs had constructed the residential house marked by letters CDEF leaving the space marked by letters ABCD shown red in the site plan out of their self-owned property for their personal use, i.e. to park tractor, trolleys, buggi and for tethering cattle .etc but the defendants have demolished the wall of the plaintiffs, so the plaintiffs were compelled to file the present suit, thus the plaintiffs have genuine cause of action to file the present suit. It is wrong to allege that the plaintiffs have no irreparable loss, balance of convenience, prima facie case. In fact, the plaintiffs have to suffer irreparable loss, and the balance of convenience lies in favour of the plaintiffs, as the case of the plaintiffs is a good prima facie one. It is wrong to allege that the suit property is used by the inhabitants as a street since the existence of village Kurana and this property is common property. In fact, the suit property is not being used by the inhabitants as a street since the existence of village Kurana and this property is not a common property. It is wrong to allege that the suit of the plaintiffs is false, bogus, frivolous, grounds. In fact, the suit of the plaintiffs is not false, bogus, and is not based on frivolous

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ground and is filed on the true and material facts. It is wrong to allege that the suit land is owned by the Gram Panchayat and is reserved for the benefit of the village community. In fact, the suit land is not owned by the Gram Panchayat and is not reserved for the benefit of the village community. It is self-owned property by the forefathers of the plaintiffs. It is wrong to allege that the plaintiffs are not entitled for any kind of relief and there is no exclusive possession of the plaintiffs over the land of the Gram Panchayat to show the prima facie case. In fact the plaintiffs are entitled for the relief prayed for in the plaint and there is exclusive possession of the plaintiffs over the suit land. It is wrong to allege that the suit of the plaintiffs is abuse the process of joinder and mis-joinder. In fact the suit of the plaintiffs is not the abuse the process of joinder and mis-joinder. That, para no. 17 of the PO of the written statement is wrong, incorrect and hence denied. It is wrong to allege that the plaintiffs have not come with clean hands before the Hon'ble Court and suppressed the true and material facts. In fact, the plaintiffs have come before the Hon'ble Court with clean hands and have not suppressed any true and material facts. It is wrong to allege that the possession was taken by the Gram Panchayat in the presence of the respectable persons of the village Kurana. In fact the signatures of respectable persons of the village are false and bogus. It is wrong to allege that after taking possession from the plaintiffs and other mischievous persons the Gram Panchayat is owner in possession of the suit land and is managing the same. It is wrong to allege

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that the suit of the plaintiffs is barred by provisions of Haryana Panchayati Raj Act, In fact the suit of the plaintiffs is not barred by provisions of Haryana Panchayati Raj Act. It is wrong to allege that the suit of the plaintiffs is barred by provisions of rule 6 of Punjab Village Common Land Act, 1964. In fact, the suit of the plaintiffs is not barred by provisions of rule 6 of Punjab Village Common Land Act, 1964. It is wrong to allege that the Gram Panchayat is competent to manage the land of the Gram Panchayat in large benefit of inhabitants of the village/citizen of India. In fact the Gram Panchayat is not competent to manage the land of the Gram Panchayat in large benefit of inhabitants of the village/citizen of India. **The plaintiffs in reply to facts on merit deposed** that in fact, the defendants nos. 1 and 2 are Govt. employees and they are acting against the plaintiffs at the instance of defendant no. 3. Hence the requisite notice u/s 80 CPC is necessary prior to institution of the suit against a Government Employees. But the relief claimed by the plaintiffs is of an urgent nature. If the notice u/s 80 CPC is served upon the defendants nos. 1 and 2, then the suit would become in-fructuous and the plaintiffs would suffer irreparable loss and injury and injustice would be caused to him. So, the separate application u/s 80(2) CPC is being filed along-with the present plaint for seeking permission to institute the present suit and for dispensing with the requisite notice. The defendant no. 3 is a cooperative body. In fact, that the plaintiffs are the owners in possession of the house marked by letters CDEF along-with open space marked by letters ABCD

shown red in the site plan attached, since the time of their forefathers. In fact, the plaintiffs are the owners in possession of the house marked by letters CDEF along-with open space marked by letters ABCD shown red in the site plan attached, since the time of their forefathers. In fact, the defendants have no right title or interest to interfere in the peaceful possession of the plaintiffs over the vacant space owned and possessed by the plaintiffs, marked by letters ABCD shown red in the site plan attached as the said space is owned by the plaintiffs and was left vacant only to park the tractor-trolley and buggies etc. and to tether the cattle etc. In fact, about 10-15 years ago, the defendant no. 3 had constructed Gali by affixing inter-locking tiles, after demolishing the bricks, on the northern side of the vacant space marked by letters ABCD without interfering in the peaceful possession of the plaintiffs over the said space. In fact, on 21.09.2017, the defendant no. 3 along-with JCB Machine came over the spot and demolished the wall of the well, installed on the eastern side of the house of the plaintiffs and affixed the inter- locking tiles on the surrounding area of the well and threatened the plaintiffs also to affix interlocking tiles on the space owned and possessed by the plaintiffs marked by letters ABCD shown red in the site plan, in near future after finding suitable opportunity. In fact the Sarpanch of the Gram Panchayath as a jealousy with the plaintiffs as the plaintiffs had opposed the Sarpanch at the time of Panchayat election. On the next day, the plaintiffs alongwith some respectables of the village approached the defendant and requested

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them not to interfere in the peaceful possession of the plaintiffs over the vacant space marked by letters ABCD but the defendants did not accede the genuine request of the plaintiffs and are adamant to affix the tiles on the above space marked by letters ABCD shown red in the site plan attached. The said threat is imminent and is still continuing. In fact, in case the defendants succeed in affixing tiles on the vacant space marked by letters ABCD shown red in the site plan attached, then the plaintiffs will suffer irreparable loss and injury which can-not be compensated in terms of money, but on the other hand, if the defendants are restrained from doing so, they will lose nothing. In fact, during the pendency of the above titled suit, the defendants have changed the nature of the suit property forcibly and illegally and removed the water pipe affixed in the property marked by letters ABCD shown red in the site plan and also affixed the tiles over the space marked by letters ABCD and also raised construction of a wall over the space marked by letters ABCD forcibly and illegally in violation of the status quo order dated 06.01.2018 passed by the Hon'ble Court knowingly and intentionally. In fact, in the above noted case on 06.01.2018, the Hon'ble Court after hearing the counsels for both the parties, directed both the parties to maintain status quo till the next date of hearing i.e. 10.01.2018. The defendants were fully aware of the orders of maintaining status quo passed by the Hon'ble Court but the defendants continued to extend the threatening to interfere in the peaceful possession of the plaintiffs and to encroach upon the property owned and

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possessed by the plaintiffs marked by letters ABCD illegally and unlawfully. In the mid night of 16/17.01.2018 the defendants along-with 18-20 persons came over the suit property and removed the water pipe affixed in the property marked by letters ABCD in the site plan. Thereafter on 02.02.2018, the defendants along-with 8-10 laborers and cemented tiles (bricks) sand and cement came on the disputed property marked by letters ABCD with an intention to affix tiles on space marked by letters ABCD and to raise wall in the shape of permanent construction on the property marked by letters ABCD. The plaintiffs requested defendants not to commit any kind of encroachment over the property in dispute and at that time the plaintiffs and the son of the plaintiff no. 1 immediately went to the police station and told the whole story to the SHO Madlauda and showed him the orders of status quo passed by the Hon'ble Court. The plaintiff no. 1 and his son also requested the SHO to visit the suit property and to stop the on-going construction by the defendants but he refused to do any-thing and told the plaintiffs to approach the Hon'ble Court by filing the contempt application. In the meantime, the defendants affixed the tiles over the space marked by letters ABCD in ultra violation and disregard of the order of maintaining status quo passed by this Hon'ble Court. The defendants have willfully and intentionally violated the order dated 06.01.2018 for maintaining status quo passed by this Hon'ble Court with impunity. The defendants have openly declared that court cannot do anything against them. By willfully and intentionally violated the order

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dated 06.01.2018 passed by the Hon'ble Court. The defendants have made themselves liable to be punished under the provisions of order 39 rule 2-A read with section 151 CPC. The plaintiffs filed the contempt application before the Hon'ble Court against the defendants and the same is fixed for 19.02.2024. In fact, on 11.01.2019 during the pendency of the first contempt application the defendants alongwith 8-10 labourers and cemented tiles (bricks) sand and cement came on the disputed property marked by letters ABCD with an intention to raise construction of the wall on space marked by letters ABCD. The plaintiffs requested the defendants not to raise any construction and to commit any kind of encroachment over the property in dispute and at that time the plaintiffs immediately went to the police station and told the whole story to the SHO Madlauda and showed him the orders of status quo passed by the Hon'ble Court. The plaintiff no. 1 and his son also requested the SHO to visit the suit property and to stop the on-going construction by the defendants. Thereafter, the Incharge of the Police Post Urlana Kalan came over the spot and stopped the construction work being carried out by the defendants. Thereafter, when the plaintiffs requested to Incharge Police Post Urlana Kalan to take legal action against the defendants, but he refused to do anything and told the plaintiffs to approach the Hon'ble Court by filing the contempt application. In the meantime, the defendants raised the construction of a wall over, the space marked by letters ABCD in ultra violation and disregard of the order of maintaining status quo passed by this Hon'ble

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Court. The photographs of the construction raised by the defendants are attached herewith. The defendants have willfully and intentionally violated the order dated 06.01.2018 for maintaining status-quo passed by this Hon'ble Court with impunity. Defendants have openly declared that court cannot do anything against them and also threatened to kill the plaintiffs in case the plaintiffs take any action against them. The said threat is imminent and is still continuing. The defendants by willfully and intentionally again violated the order dated 06.01.2018 passed by the Hon'ble Court. The defendants have made themselves liable to be punished under the provisions of order 39 rule 2-A read with section 151 CPC. The plaintiffs filed the contempt application before the Hon'ble Court against the defendants and same is fixed for 15.02.2023. The plaintiffs requested the defendants several times to remove their illegal encroachment from the suit property of the plaintiffs but the defendants have not been paying any heed on the request of the plaintiffs and are prolonging the matter under one pretext or the other knowingly and intentionally. In fact, the plaintiffs have genuine cause of action to file the present suit. In fact, this Hon'ble Court has every jurisdiction to file the present suit. In fact, the suit has been properly valued and a proper court fee has been affixed on the plaint. It is, therefore, prayed that the suit of the plaintiffs may kindly be decreed with costs. Any other relief to which the plaintiffs are found entitled may also be granted.

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Issues for Adjudication: -

5. In the wake of pleadings of the parties, issues were framed on firstly on 19-02-2024 by the then Ld. Civil Judge (Junior Division), Panipat. The following issues were framed:

1. Whether the plaintiff is entitled to a decree for permanent injunction along with mandatory injunction directing the defendants to remove their illegal construction/encroachment from the suit property as prayed for? OPP
2. Whether the present suit is not maintainable? OPD.
3. Whether plaintiff has not come to court with clean hands and has suppressed the true and material facts of the case? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff is bad for non-joinder and mis-joinder of the necessary parties? OPD
6. Relief

Plaintiffs' Evidence: -

6. Thereafter, the plaintiffs were called upon to lead their evidences and the plaintiffs in order to prove their case have adduced following evidences:

Oral Evidence: -

PW1	Ram Phal
PW2	Laxmi

Documentary Evidence: -

Ex. P1	Site plan.
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Ex. P2 to	Photographs.
Ex. P15	
Mark A to	Photographs.
Mark F	
Ex. P16	Site plan

Following this, the evidence on behalf of plaintiffs was closed by Ld. Counsel for the plaintiffs on 28-08-2024.

Defendants' Evidence: -

7. Thereafter, in order to rebut the evidence of the plaintiff, the defendants have adduced the following evidences: -

Oral Evidence: -

DW1	Meer Baj
DW2	Dalbir
DW3	Mahipal

Documentary Evidence: -

Ex. D1	Copy of Authority letter.
Ex. D2	Copy of letter from BDPO, Israna to SHO PS Matlauda, Panipat.
Ex. D3	Copy of letter from BDPO, Israna to SHO PS Matlauda, Panipat.
Ex. D4	Copy of Attendance Sheet
Ex. D5	Copy of letter from BDPO, Israna to SHO P.S. Matlauda, Panipat.
Ex. D6	Copy of Attendance sheet
Ex. D7	Copy of letter from Ramphal to Gram Sarpanch of Gram Panchayat, village Kurana, Teh. Israna, Panipat

Ex. D8 Certified copy of Statement of AW2
recorded in case titled as “Ram Phal and others v
State of Haryana and others” bearing CIS
number CM-05 of 2019.

Ex. D9 Certified copy of Statement of RW3
recorded in case titled as “Ram Phal and others v
State of Haryana and others” bearing CIS
number CM-05 of 2019.

Ex. D10 Certified copy of Statement of RW4
recorded in case titled as “Ram Phal and others v
State of Haryana and others” bearing CIS
number CM-05 of 2019.

Thereafter, evidence on behalf of defendants no. 1 was closed by court order vide order dated 07-11-2024 and evidence on behalf of defendants no. 2 and 3 was closed by learned counsel for the defendants no. 2 and 3 vide separate statement dated 07-11-2024 after giving up DW3 from evidence of Defendants.

8. The learned counsel for the Plaintiff tendered Ex. P17 i.e., Attested Copy of Contempt Petition filed by “Ramphal and others v State of Haryana and Others” bearing CIS number CM-90 of 2018 and Ex. P18 i.e., Attested copy of Contempt Petition filed by “Ramphal and others v State of Haryana and Others” bearing CIS number CM-05 of 2019 in rebuttal evidence and no other rebuttal evidence was led by the Plaintiff. Even no request for adjournment was sought, there was no justification to adjourn the case for the same purpose and the same was stands closed by the Court order. Thereafter, the case was fixed for arguments.

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Observations and discussion of evidences: -

9. The Court has heard Sh. Tejbir Deswal, Advocate, learned counsel for the plaintiffs and Sh. Neeraj Kumar and Sh. B.S. Kharb, Advocates for Defendants no. 1 to 3 and has perused the record of the case very carefully with their able assistance. Issue-wise findings along with reasons thereof are as follows: -

Issue No. 1: -

1. Whether the plaintiff is entitled to a decree for permanent injunction along with mandatory injunction directing the defendants to remove their illegal construction/encroachment from the suit property as prayed for? OPP

10. The burden of proving this issue is upon the plaintiffs. The plaintiffs in order to discharge the said burden in their favour have examined as many as two witnesses. It would not be out of the place to give brief resume of the witnesses examined by the plaintiffs.

(i) The plaintiffs in order to prove its case first of all got examined Ramphal as PW1, PW1 in his examination in chief he tendered his duly sworn affidavit i.e., Ex. PW1/A, vide which he reiterated the contents of the Plaint in toto, as have been discussed in detail in Para no. 2 of this judgment and are therefore, not repeated here again for the sake of brevity. PW1 tendered on record Ex. P1 to Ex. P16 and Mark A to Mark F in his evidence. Further PW1 was cross-examined by the Ld. Counsel for the Defendants wherein he stated that I am 10th class pass. I cannot tell what is written in my affidavit Ex. PW1/A. Photo Mark A to Mark F were brought by me. I do not have any Negatives or Receipts for these photos. The open space lying vacant in front of my house has a Well in it one side.

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This well was used to fetch water by villagers for their daily use. This Well had the water until recently. Self stated that the Well is dismantled. Well is visible in Ex. P9. I do not have any ownership document for the Well which is seen in Ex. P9. Self stated that this Well is in the Lal Dora of Village and it was maintained by our fore fathers. **It is correct that the suit land is common land of all villagers and is being used by all the villagers.** The Street shown in Ex. P8 at point A was constructed more than 40 years ago. I do not have the receipt for the bricks which were laid down on it and the material used in it and the labor which was used to built it. Self-stated that we ourselves are constructors. The street at point B in the Ex. P8 was also prepared then itself. I do not know what the Panchayat want to construct in the land of Well itself. I know that the Government has got the Lal Dora land Demarcated for making the villages free from land of Lal Dora. That one unique ID are also issued for the lands in Lal Dora. It is also correct that the name of the owners of that land are also mentioned in those ownership certificates. I have not brought the ID today. The record is in BDPO office. I have not given any application for the aforesaid Well and land in the BDPO office. The Well is the common property of Village. It is wrong to say that the Well is in ownership of Panchayat. Self stated that it is common Well of the whole village. I have given the site plan of my house. It is correct that the drain shown in the EX, P16 and Ex. P18 is not shown in the site plan. It is correct that the site plan is not having the signature of any Lambardar,

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Sarpanch .etc. of village. It is correct that I have not mentioned the details in Ex. P16. It is correct that there is open land in front of my house. There is a cut for the street in the Ex. P3 at point A and B. it is wrong to say that the animals shown in the Ex. P3 are mine. The Panchayat had wrongly did the work of laying the bricks and boundary and other work on this land illegally and is totally wrong. **Self stated that Panchayat want to put the person in possession of land, one who had dismantled the Well. I do not want to make the Well working. I do not have anything to do with the Well.** The street shown from Point K to point L in Ex. P1 is used by me. I do not have any thing even if the boundary of well is done or not but the land of Well must not be taken possession of. All other suggestions were denied by PW1.

(ii) The plaintiffs in order to prove its case then got examined Lakshmi as PW2, PW2 in his examination in chief he tendered his duly sworn affidavit i.e., Ex. PW2/A, vide which he also reiterated the contents of the Plaint, as have been discussed in detail in Para no. 2 of this judgment and are therefore, not repeated here again for the sake of brevity. Further PW2 was cross-examined by the Ld. Counsel for the Defendants wherein he stated that the well which is in the suit land was constructed before my knowledge. Self-stated that thousands of years have passed. Panchayat does not have any role in it. I fetched the water from the Well and served it to my animals. I bathed and also washed there. I stopped taking bath at Well four years ago. **This Well is of whole village and it**

not of one person. No repair was ever required for the Well. Panchayat sometimes takes care of the Wells and Streets and *Chopals* and many a times don't. I can-not read my affidavit. I do not know about the S. 80 of CPC mentioned in my affidavit. No site plan was ever made before me. I never applied my thumb impression on it. Ramphal's belongings are 10 yrs old. He had constructed after leaving the land of Well. I was present at spot when the plaintiff constructed his house. The drain and street in front of house of plaintiff was already there before the construction was raised by plaintiff of his house. No one is entitled to encroach the land of Well. I have not seen the site plan given by the plaintiff on file. I do not know the meaning of Status Quo. No one had demarcated the land of Well and the house of plaintiff before me. The streets are constructed by the Village Panchayat. All other suggestions were denied by PW2.

11. Thereafter, in order to rebut the evidence so brought on record by the plaintiffs, the defendants have examined as many as two witness. It would not be out of the place to give brief resume of the witnesses examined by the defendants:

(i) The defendants first of all got examined Meer Baj, Panch, Gram Panchayat village Kurana, Tehsil Israna, Panipat as DW1, who in his examination in chief tendered his duly sworn affidavit i.e., Ex.DW1/A, and vide which he reiterated the contents of the written statement in toto, as have been discussed in detail in Para no. 3 of this judgment and are therefore, not repeated here again for the sake of brevity.

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DW1 tendered on record Ex. D1 to Ex. D7 in his evidence. DW1 was then cross examined by the Ld. Counsel for the Plaintiffs wherein he stated that I became member of Panchayat in 2022. I do not know on which date the instant case was filed. I got to know about this case in 2022. I am 10th class pass. I gave my affidavit in examination in chief in which I mentioned that the suit land is of Panchayat and the number is something like 200. I do not know the area of the suit land. Self stated that I have not demarcated it on spot. It is correct that the land which I am saying of is the land of Well. It is correct that the land of the plaintiff is lying adjacent to the land of Well. I was not present when the Panchayat laid down the bricks on the land and boundary wall was constructed. It is correct that the land shown in site plan Ex. P1 as ABCD is in front of house of plaintiff in which the defendant has made a wall. Self-stated that not a wall but the floor was laid down. Some portion is left still. I am not the summoned witness. I did not got passed any resolution by the gram panchayat for deposing in this case as Panch. The Panchayat book contains the proceedings conducted in this case. The photos Ex. P2 to Ex. P15 are correct and shows correctly the things done. It is correct that the person who is in possession over the land of lal dora becomes the owner of it and there are no records of that land. It is wrong to say that the plaintiff is owner in possession over the suit land ABCD. All other suggestions put to him were denied specifically by DW1 *in toto*.

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(ii) The defendants thereafter got examined Dalbir Singh as DW2, who in his examination in chief tendered his duly sworn affidavit i.e., Ex.DW2/A, vide which he reiterated the contents of the written statement in toto, as have been discussed in detail in Para no. 3 of this judgment and are therefore, not repeated here again for the sake of brevity. DW2 was then cross examined by the Ld. Counsel for the Plaintiffs wherein he stated that I am not the summoned witness. I came by myself to depose in this case. I do not know about the number of the land of Well. Self stated that the number is mentioned in the case. Self stated that the number of Well is 248. The Well is in front of my house. The Well is being used for last 200 years. **The Well was closed in 2016-17.** There is boundary wall of Well. The Panchayat got the land demarcated and then got the street constructed and the land of the Well, constructed by concrete. I was not present at the time of the demarcation. Plaintiff is my neighbor. It is wrong to say that plaintiff is owner of the ABCD portion. I do not know that the order for Status quo were passed for the suit land. The stay was passed in 2018 but the wall was constructed before 2018 itself. When the wall was constructed then the demarcation was not done self stated that it was done earlier. There is Wall on the suit land and it is of 4 foot height and is in suit property. it is wrong to say that the department never got the demarcation done before raising construction. Photos Ex. P2 to Ex. P15 are correct as per site. All other suggestions put to him were denied specifically by DW1 *in toto*.

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Findings of the Court: -

12. Both the counsels argued vehemently in the line of the averments as contained in the Para No. 2 and 3 of this Judgment. Hence, after the careful scrutiny of the evidence brought on record by the plaintiffs and defendants in the present case, this Court is of the confirmed and considered view that the plaintiffs have not been able to discharge the burden of proving the above-mentioned issue No. 1 in their favour. In this regard, it is pertinent to mention here that the plaintiffs by getting examined plaintiff no. 1 as PW1, and by getting examined PW2 on record and by tendering on record site plan as Ex. P1 and Photographs as Ex. P2 to Ex. P15 and mark A to Mark F has tried to establish that in the suit property the plaintiffs have their right as owners in possession. However, the plaintiffs have failed to prove the same as averred by them in their plaint. As no record has been shown by the plaintiffs to have the portion shown as CDEF and ABCD from the time of their forefathers. Though the DWs who came on record has admitted that the Photographs shows the site as it is, but the same are not proof of the possession of the plaintiff as owner in possession over the portion ABCD shown in the Ex. P1 and Ex. P16 and the plaintiff himself while stepping in witness box as PW1 has admitted himself that the land of Well is a common land and is being used by the villagers from the time of their forefathers. Therefore, the plaintiffs have clearly failed to prove that they are owners in possession over the portion ABCD shown in the Ex. P1 and Ex. P16 i.e., Site plans. No direct

proof of possession has been brought and proved on record by the plaintiffs. Furthermore, when the plaintiff is not entitled to the equitable relief of permanent injunction then the consequential relief of mandatory injunction also falls to the ground and there is nothing in favor of plaintiff to allow the said consequential relief of mandatory injunction.

13. Hence, in consonance with the foregoing discussion, and keeping in view the arguments and the documents so placed on record, this Court is of the considered view that the plaintiffs have failed to stand on their own legs for the instant issue no.1 and have not been able to discharge the burden of proving the abovementioned issue No.1 in their favour and therefore the same is decided against the plaintiffs.

Issues No: 2 to 5 :

2. Whether the present suit is not maintainable? OPD.
3. Whether plaintiff has not come to court with clean hands and has suppressed the true and material facts of the case? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff is bad for non-joinder and mis-joinder of the necessary parties? OPD

14. Burden of proving these issues was upon the defendants. However, during the course of arguments these issues were not pressed upon by the learned counsel for the defendants. Hence, these issues are hereby disposed of being not pressed.

RELIEF: -

Conclusion: - Dismissed with no order as to Costs.

15. As a sequel to findings of the Court on the aforementioned issues, especially issues no. 1 & in view of the settled position of law as

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discussed in detail above and from the perusal of the evidence brought on record, coupled with the facts of the present case in hand, **the suit of the plaintiffs fails and the same is hereby dismissed with no order as to costs.** Decree sheet be prepared accordingly and file after completion of all the necessary formalities be consigned to the record room.

Announced in open Court
Dated: 13.12.2024

(Vikas Verma)
Civil Judge (Jr.Divn.)
(UID NO. HR-0553)
Panipat

Note: All the thirty four (34) pages of this judgment have been dictated, checked and signed by me.

(Vikas Verma)
Civil Judge (Jr.Divn.)
(UID NO. HR-0553)
Panipat, 13.12.2024

Typed by
Karun Aneja, Stenographer Gr.II

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