

Daljit Singh Vs. Sukhwinder Singh and others

**IN THE COURT OF MS. ARPNA, PCS,
CIVIL JUDGE (JR. DIVISION), JALANDHAR.**
(Unique Identification No. PB0618)

CIS No.CS-3782-2023

Date of Institution: 01.09.2023

CNR No. PBJL0-2004209-2023

Date of order: 03.02.2025

Pending for: 17.04.2025

Application under Order 39 Rule 1 and 2 CPC.

Present: Sh. Bhupinder Singh Lally, Advocate, Counsel for the plaintiff.
Sh. Gurvinder Arora, Advocate, Counsel for the defendants.

ORDER:

1. Vide this order the Court proposes to dispose of the application filed by the plaintiff under Order 39 Rule 1 and 2 CPC.

2. Stating in brief, the counsel for the plaintiff contends that the plaintiff is the owner in possession of the suit property as mentioned in the head note of the plaint and is situated at Village Aema, District Jalandhar. The defendant No.1 is the real brother of the plaintiff, defendant No.2 is the wife of defendant No.1 and defendant No.3 is the son of defendant No. 1 and 2. Earlier, the suit property was owned and possessed by the father of plaintiff Sh. Nirmal Singh son of Sh. Sardara Singh resident of Village Chakrala, District Jalandhar and transferred the same in favour of the plaintiff by executing registered transfer deed No. 2021-22/185/1/255 dated 30.06.2021 and possession was also handed over to the plaintiff along with

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all amenities i.e. taur and haveli which was already existed/situated within the suit property and ever since, the plaintiff is in peaceful possession of the suit. Moreover, Nirmal Singh, father of the plaintiff and defendant has disinherited the defendant No.1 and his wife and son i.e. all the defendants from his movable and immovable properties vide publication dated 06.06.2019. On the basis of above said transfer deed No. 2021-22/185/1/255 dated 30.06.2021 duly registered before Sub Registrar, Jalandhar, the mutation was sanctioned in the name of the plaintiff having its No. 1326 dated 03.08.2021 and his name was entered in the Fard Jamabandi. Defendant No.1 and his family was not happy on the transfer of the suit property by Nirmal Singh, father of plaintiff and defendant No.1 in favour of the plaintiff and since then defendant No.1 and his family members was having grudge in their mind towards the plaintiff. The defendants are threatening to interfere into peaceful possession of the plaintiff over the suit property and they further threatened to plaintiff that they shall take the possession of the haveli which is situated within the suit property at any cost. Hence, plaintiff prayed that present application be allowed.

3. Per contra, on appearance the defendants filed written statement and reply to stay application stating that plaintiff is neither owner nor has got any concern over the suit property. The father of the plaintiff and defendant no.1 had filed a petition U/s 23 (1) of Maintenance and Welfare of the Parents and Senior Citizen Act vide case no. 35/REA/2023 instituted on 4.10.2023 against the plaintiff which has been allowed by the court of Sh. Balbir Raj Singh, PCS, SDM cum Collector Jalandhar to exercising the

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power under maintenance and caretaker of parents and welfare of parents under Senior Citizen Act vide order dated 03.07.2024 and the alleged registered transfer of title deeds dated 30.06.2021 of Village Talwandi Bheela Tehsil and District Jalandhar and of Village Aema Tehsil and District Jalandhar i.e. the suit property have been cancelled and Sh. Nirmal Singh is declared to be the owner in possession of the suit property. The said transfer title deeds were procured by the plaintiff by playing fraud with his father Sh. Nirmal Singh and the Hon'ble Court has already set aside those transfer of title deeds of the plaintiff and even the mutation has again been sanctioned in favour of Sh. Nirmal Singh with regard to the suit property as per the latest jamabandi of the suit property. Therefore, the plaintiff has got no right, title or interest in the suit property. The plaintiff is neither owner nor in possession of any part of the suit property and the present suit has been filed just to harass the defendants and to grab the valuable land of Sh. Nirmal Singh, who is father of the plaintiff and defendant no. 1. It is contended by defendants that Sh. Nirmal Singh was an old and sick man and plaintiff by taking undue benefit and playing fraud got some transfer deeds in his favour from Nirmal Singh. Sh. Nirmal Singh after coming to know about the fraud committed by the plaintiff filed petition for cancellation of sale deed under Maintenance and Welfare of Parents and Senior Citizen Act 2007 before the court of SDM Jalandhar which has been allowed by the court vide order dated 03.07.2024. It is the defendant no. 1 who is in possession of the suit property, along with Sh. Nimal Singh. The plaintiff is

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not in possession of the suit property. Denying remaining averments of the application, the Defendants prayed for dismissal of the application.

4. I have heard Ld. counsels for both the parties and perused the file. It is contended by Learned counsel for the plaintiff that earlier suit property was owned and possessed by father of the plaintiff namely Nirmal Singh son of Sardara Singh. Said Nirmal Singh transferred the suit property in the name of plaintiff vide transfer deed no. 2021-22/185/1/255 dated 30.06.2021 and the possession of the suit property was handed over to the plaintiff. The defendant no. 1 is real brother of the plaintiff and defendant no. 2 and 3 are wife and son of defendant no. 1. The plaintiff is owner in possession on the basis of above-mentioned transfer deed, hence defendants be restrained from interfering into his peaceful possession and from taking forcible possession of the haveli and tying their animals in taur. The defendants be further restrained from forcibly interfering into enjoyment of the property by the plaintiff. On the other hand, it is contended by the learned counsel for the defendants that plaintiff is neither owner nor in possession over the property in question. The father of the plaintiff and defendant no. 1 namely Nirmal Singh is owner of the property in question as vide petition under Section 23 (1) of Maintenance and Welfare of Parents and Senior Citizen Act in case no. 35/REA/2023 vide order of Sh. Balbir Raj Singh, PCS, Ld. SDM-cum-Collector, Jalandhar, the property has been re-transferred in the name of father of plaintiff and defendant no. 1 namely Nirmal Singh. The consequent mutation with regard to the said fact has also entered in Jamabandi. Accordingly, defendants have prayed that plaintiff

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has no right over the property in question and hence, present application be dismissed. In order to prima facie establish his case, plaintiff has relied upon transfer deed bearing no. 2021-22/185/1/255 dated 30.06.2021 along-with Jamabandi for the year 2018-19, wherein mutation no.1326 regarding transferring of the property from Nirmal Singh has been entered in favour of plaintiff. However, on the other hand, the defendant has also relied upon Jamabandi for the year 2018-19, wherein mutation no. 1360 in column no. 8 has been entered, wherein property has been re-transferred in the name of Nirmal Singh by plaintiff Daljit Singh. In view of the above discussion and documents placed on record i.e. Jamabandi for the year 2018-19, this Court is of the considered opinion that property has now been re-transferred in the name of Nirmal Singh, father of the plaintiff and defendant no. 1. Accordingly, prima facie, the plaintiff has not been able to establish his ownership or possession over the property in question in any manner. The plaintiff and defendant no. 1 are both sons of Nirmal Singh, who is shown to be owner in possession over the property in question. Though, plaintiff alleges himself to be in possession over the property in question, however no such document has been placed by the plaintiff, which could prima facie prove his possession over the property in question. Accordingly, three ingredients of injunction i.e. prima facie case, balance of convenience and irreparable loss are not favouring the plaintiff to grant injunction against the defendants. Remaining assertions of both the parties are matter of evidence, which can be ascertained after evidence of both the parties has been led.

5. Accordingly, at this stage, no prima facie case and balance of

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convenience lies in favour of plaintiff, hence, injunction application filed by plaintiff under Order 39 Rule 1 and 2 CPC is hereby **dismissed**. However, this order of mine shall have no effect on the merits of present case.

Pronounced in open Court.

Dated: 03.02.2025

Nishu J.W. (J.G.)

Arpna, PCS

Civil Judge, Junior Division

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Present: Sh. Bhupinder Singh Lally, Advocate, Counsel for the plaintiff.
Sh. Gurvinder Arora, Advocate, Counsel for the defendants.

Arguments on application under Order 39 Rule 1 and 2 CPC heard. Vide my separate order of even date, said application filed by plaintiff is hereby **dismissed**, as stated therein.

In view of the provision of Section 89 read with Order 10 CPC, I have examined both the parties as to the possibilities of any compromise. But at this stage, there appears to be no chance of compromise between the parties. From the pleading of the parties following issues arises:

1. Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
2. Whether suit is not maintainable? OPD
3. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court? OPD.
4. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether plaintiff is estopped from filing the present suit by his own act, conduct and acquiescence to file the present suit? OPD
6. Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD
7. Relief.

No other issue arises or pressed. The case is now adjourned to 17.04.2025 for plaintiff evidence on filing of PF/DM/list of witnesses within 5 days by the plaintiff, failing which no assistance will be provided by this court to procure the presence of the witnesses. Further, it is made clear that both the parties shall be granted only three effective opportunities to lead their respective evidence.

Pronounced in open Court.
Dated: 03.02.2025

Nishu J.W. (J.G.)

Arpna, PCS
Civil Judge, Junior Division
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