

**IN THE COURT OF MS. GARIMA GUPTA, PCS,
CIVIL JUDGE (JR. DIVN.), KHARAR.
UID-PB0535**

Suit No: RT 300 of 23.05.2014/26.05.2015
CIS No: CS/444/2014
CNR No: PBSAA0000520-2014
Date of Decision: 24.10.2019

AMENDED TITLE

1. Yadwinder Singh aged about 41 years S/o Lachman Singh
S/o Kapuria R/o # 3407, Sector 27-D, Chandigarh through his
GPA Gurmit Kaur wife of Lachman Singh,

2. Puran Singh @ Sampuran Singh,

3. Gulzar Singh,

4. Darbara Singh

Sons of Santa Singh S/o Kapuria R/o Village Kansal, Tehsil
Kharar, Distt. SAS Nagar, Mohali.

.....Plaintiffs

Versus

1. Jaspal Kaur w/o Surjit Singh R/o @ 1011, Sector 43-B,
Chandigarh,

2. Arvinderpal Singh S/o Satnam Singh R/o # 3102, Sector 21-
D, Chandigarh,

3. Khuswant Singh S/o Kulwant Singh,

4. Kulwant Singh deceased through his son Khuswant Singh
defendant No. 3.

R/o Village Kansal, Tehsil Kharar, Distt. SAS Nagar, Mohali.

.....Defendants

**Suit for Permanent Injunction restraining
the defendants from encroaching upon
the land comprised in Kh/Kh No.
553/563 Khasra No. 128//15/2(0-19) and
Kh/Kh No. 590/608 to 620 Khasra No.
128//26(0-10) and land measuring 1K-
12M which is joint land (Bachat Land) of
Khewatdars of Village Kansal, situated
with in the revenue limits of Village**

Kansal, H.B. No. 354, Tehsil Kharar, Distt. SAS Nagar, Mohali by way of raising construction or in any other manner and from merging the said Joint land (Bachat Land) in their own land comprised in Kh/Kh. No. 536/546 Khara No.127//10/3/4(0-2), 128//6/4(0-6) which was purchased by defendants No. 1 and 2 from Prem Singh S/o Babu Ram and land comprised in Kh/Kh. No. 534/544 Khasra No. 127//1/1(0-0), 10/3/1(0-2), 128//6/1(0-6), Kh/Kh No. 532/542 Khasra No. 127//10/3/2(0-2), 128//6/2(0-6), Kh/Kh. No. 548/549, 127//10/3/3(0-2), 128//6/3(0-6) which was purchased by defendants No. 3 and 4 from Mohinder Singh S/o Babu Singh, Harjinder Singh S/o Ranjit Singh, Swaran Singh S/o Babu Singh as shown in the site plan attached with the plaint.

Present: Sh. Kharak Singh, Advocate, counsel for the plaintiffs.
Sh. T.C. Gupta, Advocate, counsel for the defendants.

JUDGMENT:

1. The plaintiffs have filed the present suit for permanent injunction as detailed in the head note stated above.
2. Briefly stated, the case of the plaintiffs is that plaintiff no. 1 is an absolute owner in possession of the land comprised in Khasra no. 128//15/2(0-19) and the plaintiffs are the joint owners in possession of another land mentioned in the headnote of the plaint being the co-sharers and Khewatdars of Village Kansal. Plaintiff No. 1 has encircled his plot with a boundary wall and fixed a gate and constructed a room in it. It is further averred that defendants No. 1 and 2 have purchased

the land measuring 8 marlas comprised in khewat khatauni no. 536/546 khasra no. 127//10/3/4(0-2), 128//6/4(0-6) from Prem Singh, s/o Babu Singh through a registered sale deed dated 03.02.2012.

3. It is further contended that there is a joint land (bachat land) measuring 1K-12M which is lying vacant towards U.T. Chandigarh. On one side of the purchased land of defendants No. 1 & 2, there is a passage and land of plaintiff No. 1 as shown in the site plan attached with the plaint. It is further contended that defendants No. 3 and 4 have purchased the land measuring 24 marlas comprised in Kh/Kh. No. 534/544 Khasra No. 127//1/1 (0-0), 10/3/1(0-2), 128// 6/1 (0-6), Kh/Kh. No. 532/542 Khasra No. 127//10/3/2(0-2), 128//6/2(0-6) Kh/Kh. No, 548/549, 127//10/3/3 (0-2) 128// 6/3 (0-6) through different sale deeds from Mohinder Singh S/o Babu Singh, Harjinder Singh S/o Ranjit Singh, Swaran Singh S/o Babu Singh which is also adjoining to the above said joint land (bachat land) and the land of defendants no. 1 and 2 as shown in the site plan attached with the plaint. But, defendants No. 1 and 2 have tried to take forcible possession of the suit land which was objected to by plaintiff No. 2. It is further contended that the plaintiffs have requested the defendants many times to demarcate their own purchased land but they are not ready to listen the same. Hence, the present suit.

4. Upon notice, defendants appeared through their counsel and filed their joint written statement wherein they contended that they do not know the Khatta number of the land owned by the plaintiffs. However, whatever is the land of the plaintiffs they have got boundary wall around it. So far as Khasra No. 128/26 is concerned, the same is owned by the entire village and there are village common toilets having boundary walls which touches the UT boundary. The defendants have denied the site plan which has been placed on record by the plaintiffs. It is further denied that there is any bachat land measuring 1 Kanal 12 Marla towards UT Chandigarh and there is any passage touching the land of the defendants and that of the plaintiffs. The defendants have admitted that defendants No. 3 and 4 have purchased the land but they denied that there is any bachat land as alleged by the plaintiffs. On additional objections, it is contended that the plaintiffs have not given any particulars by way of Khasra Number or boundaries by way of sketch plan regarding the suit itself is liable to be dismissed. It is further contended that the plaintiffs have not come to the Court with clean hands, the suit is not maintainable in the present form. The defendants are already in possession of the alleged land claimed by the plaintiffs and the suit is bad for non-joinder of necessary parties i.e. Gram Panchayat. Remaining averments made in the

application are denied by the answering defendants and it is lastly prayed for dismissal of the present suit with costs.

5. The plaintiffs have filed replication to the written statement of appearing defendants and have controverted the pleas of the written statement and reiterated the facts of the plaint and again prayed that the suit of the plaintiffs deserves to be decreed as prayed for in the plaint. From the pleadings of the parties, following issues were framed on 30.10.2017, which are as under:-

1. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for? OPP

2. Whether the suit of the plaintiffs is not maintainable? OPD

3. Whether the suit is bad for non-joinder of necessary parties? OPD.

4. Relief.

6. In order to prove their case, plaintiff No. 2 himself stepped into the witness box as **PW1** and reiterated in verbatim the facts of the plaint through his affidavit **Ex. PW1/A** and also tendered in evidence, documents such as, **Fard Jamabandies for the year 2008-09 as Ex.P1 to Ex.P6, site plan as Ex.P7**. Then plaintiff also examined Gurmeet Kaur as **PW2** who also reiterated in verbatim the facts of the plaint through her affidavit **Ex. PW2/A** and thereafter, ld. Counsel for the

plaintiffs closed evidence on behalf of the plaintiffs in-affirmative.

7. On the other hand, to rebut the evidence of the plaintiffs, defendant No. 3 himself stepped into the witness box as **DW1** and reiterated in verbatim the facts of the written statement through his affidavit Ex.DW1/A. Defendants further examined **DW2** who also reiterated in verbatim the facts of the written statement through his affidavit Ex.DW2/A and also tendered into evidence, documents such as **Special Power of Attorney as Ex.D2** and thereafter, ld. Counsel for the defendants closed evidence on behalf of the defendants.

8. Ld. Counsel for the plaintiffs has argued that the plaintiffs are the joint owners of the Bachat Land measuring 1 Kanal 12 Marlas falling in Khasra No. 128//26(0-10) and they are joint Khewatdars in the said land but the defendants are trying to encroach upon the said Bachat Land for which they have no right to do so as this Bachat Land is being used for the common purposes by the villagers i.e. common toilets, are being constructed on them. It is further argued that from the oral as well as documentary evidence adduced on record by the plaintiffs, they have duly proved their case against the defendants and hence, they are entitled for the relief of permanent injunction. Hence, prayed to decree the suit of the plaintiffs.

9. On the other hand, ld. Counsel for the defendants have contended that the plaintiffs have no locus standi to file the present suit and the same is not maintainable in the present form as the proper remedy before the plaintiffs is to file the suit for partition and not the injunction. It is further argued that since there are various khewatdars in the joint land, which is being used by all the villagers for the common purposes, therefore, the plaintiffs have miserably failed to prove on record that how the defendants are trying to encroach upon the said land by way of the sufficient oral and documentary evidence on record. Hence, prayed to dismiss the suit of the plaintiffs with costs.

10. I have heard the learned counsels for the parties and have gone through the judicial record carefully and minutely. My issue-wise findings are as under:

ISSUES No.1 AND 2:-

11. Both issues have been taken up together in order to avoid repetition of their discussion. Onus to prove issue No. 1 has been upon the plaintiffs whereas onus to prove the issue No. 2 has been placed upon the defendants. In the present case, the plaintiff is seeking the relief of injunction against the defendants for restraining them for raising common construction or merging the joint Bachat Land comprised in Khasra No. 128//26(0-10) into their own land. The Court is of

the considered view that it is a settled principle of law that it is the duty of the plaintiff to prove his own case on its own legs by leading cogent and convincing evidence on record and he cannot take the benefit of weaknesses of the opposite party. In the present case also, it is the duty of the plaintiffs to prove their case by leading oral as well as documentary evidence on record.

12. The Court has observed that the plaintiffs have contended their exclusive ownership and possession over the Khasra No. 128//15/2(0-19) and to prove the same, they have placed on record Jamabandi for the year 2008-09 as **Ex.P1** from which it transpires that plaintiffs are the exclusive owners in possession over the above mentioned Khasra Number and this fact is also admitted by the defendants. Thereafter, the plaintiffs are seeking the relief of injunction over the Khasra No. 128//26(0-10) and land measuring 1 Kanal 12 Malras which is Bachat Land of Khewatdars of village Kansal against the defendants as they have an apprehension that the defendants are trying to encroach upon the joint land of the villagers into their own land by raising construction over the same. In order to prove their case, **plaintiff No. 2 Puran Singh** himself has stepped into the witness box as **PW1** and during his cross-examination, he has admitted that he has never taken any demarcation on the disputed land or that of the plots of the defendants of of the plaintiffs. He further admitted that Bachat

Land belongs to entire villagers and that of Khewatdars and he cannot produce any record showing that how much land is deducted from his khewat.

13. After that, plaintiffs got examined **PW2 Gurmail Kaur** and during her cross-examination, she stated that the property which they are claiming is joint by four persons i.e. Gulzara Singh, Darbara Singh, Yadwinder Singh and Sampuran Singh. She further stated that no person is trying to encroach upon common disputed property and there used to be earlier toilets in the common land but after demolishing the same a common tubewell is installed therein. However, in their documentary evidence, they have relied upon the documents i.e. **Fard Jamabandies for the year 2008-09 as Ex.P1 to Ex.P6, site plan as Ex.P7** and closed their evidence.

14. However, on the other side, the defendants have contended that the plaintiffs have miserably failed to prove their case against the defendants as they have not adduced even a single evidence on record from which it can be inferred that defendants have ever threatened or are trying to interfere into the suit property. Moreover, the land comprised in Khewat No. 128//26(0-10) is a joint land, which is used by the entire villagers for the common purposes and therefore, the plaintiffs have no individual rights over the said land and if the plaintiffs have any grievance, then the property remedy available to the

plaintiffs is to file the suit for partition and not for seeking injunction. The Court has perused the Jamabandi for the year 2008-09 which **Ex.P6** and on the perusal of the same, it transpires that the land comprised in Khasra No. 128//26(0-10) is a joint land/Bachat Land of the village Khewatdars and is being used by all the villagers for their common purposes. The Court is of the considered view that since the plaintiffs themselves have admitted that the joint nature of the suit land and that no demarcation has ever taken place regarding the suit property, therefore, simplicitor suit for injunction is not maintainable in the present form.

15. The Court has relied upon the Judgment in the case titled as ***“Bachan Singh Vs. Swaran Singh” 2000(3) CCC 2, wherein it has been held that Civil Procedure Code, 1908, O.39 R. 1,2-Specific Relief Act, 1963, Section 37, 38 – Co-owner – Right to seek injunction against co-owner in exclusive possession of the entire or part of the property – Held that (I) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the property amount to ouster, prejudicial or adverse to the interest of co-owner out of possession; (ii) mere making of construction or improvement of, in, the common property does not amount to ouster: (iii) If***

by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property;

(iv) if the acts of the co-owner in possession are detrimental to the interest of co-owner, a co owner out of possession can seek an injunction to prevent such act which is detrimental to his interest in all other cases, the remedy of co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.

16. Further, the Court is of the considered view that before granting the relief of permanent injunction, the Court has to see the cardinal principles of injunction which has been laid down by the Hon'ble Apex Court in various judgments which are as follows:-

- 1. A prima facie case should made out in favour of the plaintiff,*
- 2. Balance of convenience should also lie in his favour,*
- 3. An irreparable loss will be caused to the plaintiff which cannot be compensated in terms of money.*

If all the three principles are duly proved by the plaintiff, only then, relief of injunction can be granted to him. But in the present case as discussed above, the plaintiffs have failed to prove that prima facie case is made out in their favour. Balance of convenience also does not lie in their favour and no irreparable loss will be caused to them which cannot be compensated in terms of money. Further, it is not a violative of every legal right which justifies the grant of injunction. There must be some equitable ground for interference by injunction such as a necessity of preventive irreparable loss. The Courts while issuing injunction must act in a careful manner. The applicant must atleast make out a prima-facie case and in the present case, there is absolutely nothing on record to prima-facie show as to on what basis the plaintiff has been conceptualizing his alleged victimization at the hands of the defendant.

17. Hence, in lieu of above said discussion, the present suit is not maintainable in the present form, hence, **issue No. 2** is decided in favour of the defendants and against the plaintiffs. Further, even for the sake of documents, it is believed that the present suit is maintainable, even then the plaintiffs have miserably failed to prove that how prima facie case is made out in their favour and irreparable loss will be caused to them.

Hence, **issue No. 1** is also decided against the plaintiffs and in favour of the defendants.

ISSUE No. 3:-

18. Onus to prove this issue has been placed upon the defendants. However, the defendants have not adduced any evidence to show how the suit is bad for non-joinder of necessary parties. Hence, this issue is decided in favour of the plaintiffs and against the defendants.

RELIEF

19. In view of my findings on the above issues, suit of the plaintiffs fails and the same is hereby dismissed with costs. Decree sheet be prepared accordingly. File be consigned to the record room.

Pronounced in Open Court:
Dated:24.10.2019

(Garima Gupta)
Civil Judge (Jr.Divn.)
Kharar. UID-PB0535

Parminder Singh