

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-2638-2019 (O&M)****Date of decision: 15.01.2026****Ayyub****...Appellant(s)****Vs.****Ilyas and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Mohammad Arshad, Advocate and
Mr. Mohammed Aadil Hussain, Advocate
for the appellant.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Court below; whereby Civil Suit No. 106 of 2015 filed by the appellant for permanent injunction, has been dismissed by both the Courts below.

2. It was the pleaded in the plaint that the appellant/plaintiff and defendant No.1 are real brothers. Previously suit land was owned by Rustam, father of the parties, who had executed registered Will dated 29.08.2006 in respect of the suit land in favour of the plaintiff and defendant No.1 in equal shares. After the death of Rustam on 28.03.2015, plaintiff and defendant No.1 took possession of the land according to Will dated 29.08.2006. Mutation dated 15.07.2015 was accordingly entered in favour of plaintiff and defendant No.1. The plaintiff pleaded that khasra



numbers 16//23/2 out of the suit land had fallen to the share of the plaintiff which had trees standing upon the same. It was alleged that on 28.10.2015 defendant had cut trees illegally and unlawfully in respect of which appellant had moved an application before the SHO, Ferozepur Jhirka. It was alleged that defendant No.1 being strong head person was bent upon dispossessing the plaintiff from the suit property. Accordingly, Civil Suit No. 106 of 2015 was filed by the plaintiff for permanent injunction on 06.11.2015. Defendant No.1 namely Ilyas had also filed Civil Suit No. 34 dated 01.07.2015 for possession against the present appellant.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Ferozepur Jhirka vide common judgment dated 17.11.2017 had dismissed the suit of the plaintiff; whereas Civil Suit No. 34 of 2015 filed by the respondent was decreed. Against the said judgment dated 17.11.2017, the appellant had preferred Civil Appeal No. 171 and Civil Appeal No. 170 both dated 20.12.2017. Vide common judgment and decree dated 21.02.2019, the learned District Judge, Mewat had dismissed both the appeals of the plaintiff. Hence, present Second Appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant that the Will dated 29.8.2006 was executed and registered by Rustam with his free will and sound mind to avoid further disputes or litigation in respect of the suit land between the parties. It is contended that Meo proprietor can alienate, gift, Will out of his property in lieu of services, assistance to cultivation of land in favour of his sons. The male proprietor



can will out his property to avoid dispute between his heirs which amounts to acceleration of succession.

5. It is further submitted by learned counsel for the appellant that the Ld. lower Court has failed to take into consideration that respondent is co-sharer in the suit property after death of Rustam whereas appellant is in exclusive possession over the suit land and as per mutation of the Will, the respondent has no right, title and interest to interfere in the possession of the appellant.

6. Learned counsel for the appellant further submits that the Ld. Courts below have failed to take into consideration the fact that the respondent and his sons removed three trees of sehtoot, four trees of Neem, one tree of kikkar and one tree of Peepal from the suit property which had fallen in the share of appellant. The appellant moved an application to SHO Ferozepur-Jhirka in that regard and the said facts also proved on the file but learned lower Court has not appreciated those facts while deciding issues No.1 to 3 which caused great prejudice to the appellant. The learned lower Court wrongly held that the respondent No.1 is co-sharer after death of Rustam along with the appellant in the entire suit property and relief of permanent injunction has not been granted in favour of the appellant. It has been further submitted that learned lower Court wrongly decided issues No.4 to 7 against the appellant whereas the appellant has led evidence on these issues which are fully proved on file.

7. It is accordingly submitted that learned Courts below have misread and misinterpreted oral as well as documentary evidence on



record resulting in impugned judgments and decrees which are, therefore, passed on the basis of conjectures and surmises and it is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

8. No other argument is raised by learned counsel for the appellant. I have heard Id. counsel and perused the case filed in detail. I find no merit in the submissions advanced on behalf of the appellant.

9. It is firstly to be pointed out that against the judgment and decree dated 21.02.2019 passed by the learned First Appellate Court in Civil Appeal No. 171 of 2017 and Civil Appeal No. 170 of 2017, it has been informed by learned counsel for the appellant that the present Regular Second Appeal has been preferred only in Civil Appeal No. 171 of 2017. It is admitted by learned counsel for the appellant before this Court that no appeal has been preferred by the appellant in the common judgment dated 21.02.2019 arising out of Civil Appeal No. 170 of 2017.

10. Keeping in view the above admission of learned counsel for the appellant, the present Second Appeal therefore, deserves to be dismissed on this short ground itself as plaintiff has failed to lay challenge to the judgment dated 21.02.2019 in the connected Civil Appeal.

11. Even otherwise, even on merits, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. It is the concurrent finding of fact of learned Courts below that the suit property was ancestral property in the hands of Rustam. As per Meo customary law, only the sons have right to succeed to the property to the



exclusion of the daughters. As such, as sons of Rustam were alive, there was no question of Meo proprietor transferring the property by way of Will; which would arise only if Meo proprietor had no son. If transfers through Will were to be allowed, the same would defeat the custom and the rights of the ancestral property. Accordingly, the learned Courts below held that vide the Will dated 29.08.2006, Rustam had no right to transfer his specific portion of the suit property to his sons. Accordingly, parties were held to be co-sharers to the suit property upon the death of Rustam; and, therefore, permanent injunction against co-sharers could not be granted. Hence, the present appellant was rightly non-suited in accordance with law.

12. Needless to say, every co-sharer is deemed to be in possession of every inch of property whereas symbolic possession of the entire suit property alongwith the appellant was granted to respondent No.1. Accordingly, legal and efficacious remedy available to the appellant, would have been to file suit for partition. In this view of the matter also, injunction could not have been granted to the appellant when alternative remedy was available to him.

13. Learned counsel for the appellant is unable to dispute or controvert the above said factual and legal position.

14. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees, and findings of fact of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.



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15. Pending applications, if any, stand disposed of.

15.01.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No