



2026:PHHC:058642

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IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA-1097-2005 (O&M) &
COC-486-2005**

Darab Singh and others

...Appellants

Versus

Bal Kishan and others

...Respondents

Reserved on 09.04.2026

Pronounced on: 20.04.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Naresh Kaushal, Advocate for the appellants.

Mr. Varun Baanth, Advocate for

Mr. A.K. Jain, Advocate for respondent No.1.

Service of other respondents dispensed with.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been preferred by some of the defendants, assailing the judgment and decree passed by the learned First Appellate Court, whereby the suit for permanent injunction, earlier dismissed by the trial Court vide judgment dated 15.12.2001, came to be decreed in favour of the plaintiff by the learned Additional District Judge, Ambala, vide judgment dated 05.03.2005.

2. For the sake of convenience, the parties are referred to as per their status before the trial Court.

3. The dispute pertains to a vacant parcel of land situated in Abadi Deh near Railway Station, Barara, District Ambala, as depicted by letters ABCDE with red colour in the site plan (Ex.P1). The case of the



plaintiff is that he has been in exclusive use and possession of the said property since the time of his forefathers. According to him, the property serves as a passage for ingress and egress to his adjoining house and shops existing on eastern side and is also used for placing goods connected with his business. It is alleged that the defendants, whose shops are located on the western and northern sides of the suit property, have no right, title or interest therein, yet they attempted to interfere with his peaceful use and possession, thereby necessitating the filing of the present suit for permanent injunction in a representative capacity under Order I Rule 8 CPC.

4. The defendants contested the suit by raising preliminary objections regarding maintainability, locus standi, and the bar of res judicata. It was contended that the very property in dispute had earlier been the subject matter of litigation initiated by the uncles of the plaintiff, which was dismissed up to the level of this High Court, thereby conclusively determining the rights of the parties. According to the defendants, the property had been acquired by them through an exchange with the District Board, Ambala, and formed part of Khasra No.590. They denied any right or possession of the plaintiff over the suit property and asserted their exclusive ownership and possession.

5. Upon appreciation of evidence led by the parties, the trial Court dismissed the suit, holding that the plaintiff failed to establish any right or interest in the suit property and that the suit was barred by the principle of res judicata. However, in appeal, the First Appellate Court reappraised the entire evidence and reversed the findings.

6. Assailing the aforesaid reversal, Learned counsel for the appellants–defendants contends that the First Appellate Court erred in reversing the well-reasoned judgment of the trial Court. It is argued that the suit property in the present case is identical to the property involved in the



earlier litigation between the parties, and therefore, the suit was rightly held by the trial Court to be barred by the principle of res judicata. On this basis, it is prayed that the impugned judgment be set aside and that of the trial Court be restored.

7. *Per contra*, learned counsel for the respondent–plaintiff supports the impugned judgment and submits that the First Appellate Court has correctly appreciated the evidence by comparing the site plan (Ex.P1) with that of the earlier litigation. It is contended that the property in dispute in the present suit is distinct from the one involved in the previous proceedings, and thus, the bar of res judicata is not attracted. Accordingly, dismissal of the appeal has been prayed for.

8. This Court has considered the rival submissions and carefully perused the record.

9. The principal question that arises for consideration is whether the present suit is barred by the principle of res judicata, and whether the plaintiff has any enforceable right to seek injunction.

10. The First Appellate Court, being the final Court of facts, has recorded a categorical finding that the property involved in the present litigation is distinct from the property, which formed the subject matter of the earlier litigation. This finding is based upon a comparative analysis of the respective site plans and is further fortified by the admissions made by the defendants themselves. The defendants failed to dispute the correctness of the site plan (Ex.P1) and, in fact, admitted the physical features and location of the adjoining properties. Such admissions constitute substantive evidence and lend credibility to the plaintiff's case.

11. It is a settled principle of law that for the application of res judicata, the matter in issue in the subsequent suit must be directly and



substantially the same as in the former suit between the same parties or their privies. In the absence of identity of subject matter, the bar of res judicata cannot be invoked.

12. In the present case, once it stands established that the suit property is different from that involved in the earlier litigation, the very foundation of the defendants' plea collapses. The First Appellate Court has, therefore, rightly held that the suit is not barred by res judicata.

13. With regard to the plaintiff's entitlement, it is true that he has not been able to establish absolute ownership over the suit property. However, the evidence on record, including the admissions of the defendants, clearly demonstrates that the plaintiff has been using the suit property for ingress and egress to his house and shops. The law is well settled that even a person in settled possession, though not the owner, is entitled to protect such possession against unlawful interference, except by due process of law.

14. The defendants have failed to establish either their ownership or exclusive possession over the suit property. Their plea that the property formed part of Khasra No.590, or that it was acquired through exchange remains unsubstantiated. Furthermore, there is no evidence to suggest that the suit property forms part of a public street. In fact, such a plea was never specifically raised by the defendants.

15. In these circumstances, the First Appellate Court rightly granted a limited decree of injunction, protecting the plaintiff's right to use the property for ingress and egress, while restraining the defendants from causing unlawful interference. Such a decree strikes a balance between competing claims and is in consonance with settled legal principles governing possessory rights.



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16. The contention raised by the learned counsel for the appellants that injunction cannot be granted in the absence of proof of title is misconceived in the facts of the present case. The authorities ***Shankar v. Ram Kala and others, Law Finder, DOC-ID #52789***; and ***Rajender Kumar Saini v. Municipal Committee, Hisar, 2001 (1) RCR (Civil) 305*** relied upon by the appellants are distinguishable, as they pertain to cases involving trespassers or public property, which is not the situation herein. On the contrary, once possession and user are established, the plaintiff is entitled to protection thereof.

17. It is also trite that in a second appeal, interference is warranted only when a substantial question of law arises. The findings recorded by the First Appellate Court are pure findings of fact based on proper appreciation of evidence and do not suffer from any perversity or legal infirmity.

18. Consequently, no ground is made out to interfere with the impugned judgment. Accordingly, the present appeal is dismissed, being devoid of merit, with no order as to costs. Pending applications, if any, also stand disposed of.

19. As far as **COCP No. 486 of 2005**, filed by the appellant-petitioner, for taking action against the respondents for alleged violation of the status quo order dated 22.03.2005 passed by this Court is concerned, the said COCP has not been pressed during arguments before this Court and as such, the same is hereby disposed of as not pressed for.

20.04.2026

Yogesh

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

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