



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-323-1997

Isham Singh

. . . . Appellant

Vs.

Ram Kishan

. . . . Respondent

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Reserved on: 10.03.2026  
Pronounced on: 12.03.2026  
Pronounced fully/operative part: Fully

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**CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

Argued by:- Mr. Keshav Pratap Singh, Advocate  
for the appellant.

Mr. Sachin Mittal, Advocate and  
Mr. Arnav Mittal, Advocate for  
the respondent.

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**DEEPAK GUPTA, J.**

The present appeal has been filed by the defendant assailing the judgment and decree passed by the learned First Appellate Court dated 19.10.1996, whereby the suit filed by the plaintiff–respondent Ram Kishan for declaration with consequential relief of permanent injunction was decreed, reversing the judgment and decree dated 16.12.1991 passed by the learned trial Court dismissing the suit and allowing the counter-claim of the defendant–appellant Isham Singh.

2. Learned counsel for both the parties have been heard and the paper-book has been carefully perused.

3. ***Facts of the Case*** : The parties to the present litigation are real brothers. The dispute pertains to a *Bara* and the building constructed thereon



situated within the Abadi Deh of Village Gharaunda, District Karnal, as detailed in the plaint.

4. According to the plaintiff–respondent, he along with the defendant–appellant was the joint owner in possession of the suit property and both of them had been using the same for common purposes without any dispute. It was further pleaded that a room on the southern side of the suit property had been constructed jointly out of common funds. The grievance of the plaintiff was that the defendant was threatening to dispossess him forcibly from the suit property. Consequently, the plaintiff filed the present suit seeking a declaration that he was joint owner in possession of the suit property along with the defendant and sought a consequential decree of permanent injunction restraining the defendant from dispossessing him from join possession.

5. ***Defence and Counter-Claim*** : The defendant–appellant contested the suit and denied the claim of joint ownership of the plaintiff. It was pleaded that the suit property was owned jointly by the defendant Isham Singh and Naseeb Singh in equal shares and that the plaintiff had no right, title or interest therein. The defendant further raised the plea that the suit was barred by the principle of res judicata. It was pointed out that earlier Civil Suit No.452 of 1981 (decided on 30.07.1983) had been filed by one Surjit Singh against five defendants including the present plaintiff and defendant. In that suit, the present plaintiff Ram Kishan and the present defendant Isham Singh were impleaded as defendant Nos.3 and 2 respectively. In the said earlier suit, it was held that Isham Singh and Naseeb Singh were owners in possession of the suit property in equal shares, and the said finding was upheld up to this Court. The defendant also pleaded that in the said earlier suit both the present parties had filed a joint written statement admitting the ownership and possession of Isham Singh and Naseeb Singh.

6. Apart from the above defence, the defendant also set up a counter-claim, asserting that the plaintiff was merely permitted to use the prop-



erty with the consent of the owners and was in possession only as a licensee. It was pleaded that the licence had been revoked prior to filing of the written statement. Accordingly, the defendant sought a decree directing the plaintiff to vacate the suit property.

7. ***Proceedings Before the Trial Court:*** The trial Court initially treated the issue of res judicata as a preliminary issue and dismissed the suit on 19.09.1987 on that ground. However, in appeal the learned First Appellate Court vide order dated 24.11.1988 held that the question of title stood concluded by res judicata but remanded the matter to the trial Court for adjudication on the nature of possession of the plaintiff for the purpose of the relief of injunction. The Regular Second Appeal filed against the order of remand was dismissed by this Court on 25.07.1989.

8. After remand, the trial Court vide judgment dated 16.12.1991 held that Isham Singh and Naseeb Singh were the owners of the suit property, and that the possession of the plaintiff was only permissive in nature as a licensee. Consequently, the suit of the plaintiff was dismissed, and the counter-claim of the defendant was allowed directing the plaintiff to vacate the property.

9. ***Findings of the First Appellate Court :*** In the appeal filed by the plaintiff, the learned First Appellate Court reversed the judgment of the trial Court. The Appellate Court held that although the title of Isham Singh and Naseeb Singh stood concluded by the earlier litigation, the nature of possession of the plaintiff had not been determined in the earlier suit. It was further observed that there was no evidence to show how and when the licence in favour of the plaintiff was created or when it was revoked. On that reasoning, the Appellate Court decreed the suit of the plaintiff and dismissed the counter-claim of the defendant.

10. ***Submissions of the Parties :*** Learned counsel for the appellant–defendant contends that once it stands conclusively established that Isham Singh and Naseeb Singh are the owners of the suit property, and the plaintiff does not



claim any independent title, tenancy or any other legal right in the property, his possession can only be permissive in nature. It is further argued that the institution of the counter-claim by the defendant itself constitutes sufficient notice for revocation of the licence, and therefore the Appellate Court erred in reversing the well-reasoned judgment of the trial Court. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack de Sequeira (dead) thr LRs and others, AIR 2012 AIR SC 1727.***

11. On the other hand, learned counsel for the respondent–plaintiff submits that the defendant failed to establish the creation and revocation of licence and therefore, the Appellate Court rightly decreed the suit.

12. ***Consideration by the Court*** : Having considered the rival submissions, this Court finds merit in the appeal.

13. It is not disputed that in the earlier litigation initiated by Surjit Singh, the Court recorded a categorical finding that Isham Singh and Naseeb Singh were the owners in possession of the suit property, and the said finding has attained finality up to this Court. It is also not disputed that in the said earlier suit the present plaintiff had himself admitted the ownership of Isham Singh and Naseeb Singh.

14. Significantly, the plaintiff does not claim any independent title over the suit property nor has he pleaded that he entered the property as a tenant, lessee, mortgagee or under any legally recognised arrangement. In such circumstances, the possession of the plaintiff can only be permissive in nature, either as a licensee, caretaker or a person allowed to occupy the premises gratuitously.

15. The law on the subject has been clearly laid down by the Hon'ble Supreme Court in ***Maria Margarida Sequeira Fernandes vs. Erasmo Jack de Sequeira (supra)***, wherein it has been held that a person who is allowed to stay in



the property gratuitously does not acquire any right or interest in the property even by long possession. The Supreme Court has further clarified that a caretaker or person allowed to stay in the premises merely holds possession on behalf of the owner and cannot claim protection of possession against the true owner.

16. In the present case, once the ownership of the defendant stands established and the plaintiff fails to show any independent legal right to remain in possession, the plaintiff cannot claim protection of possession merely on the basis of long occupation.

17. The reasoning adopted by the First Appellate Court that the licence was not proved to have been created or revoked is legally unsustainable. When a person is allowed to occupy the premises gratuitously, the law presumes such possession to be permissive, and the filing of a counter-claim seeking eviction is itself sufficient indication of revocation of such permission. Consequently, the First Appellate Court fell into a grave error in reversing the well-reasoned judgment of the trial Court.

18. **Conclusion :** In view of the aforesaid discussion, the judgment and decree passed by the learned First Appellate Court dated 19.10.1996 cannot be sustained. Accordingly, the said judgment and decree are set aside, and the judgment and decree dated 16.12.1991 passed by the learned trial Court dismissing the suit and allowing the counter-claim of the defendant, are restored. The present appeal is accordingly allowed.

(DEEPAK GUPTA)  
JUDGE

12.03.2026

Neetika Tuteja

Whether speaking/reasoned?

Yes

Whether reportable?

No

Uploaded on.: 12.03.2026