



RSA-3228-2017 (O&M), RSA-3420-2017 (O&M)
RSA-5004-2017 (O&M), RSA-5005-2017 (O&M) &
RSA-569-2024 (O&M)

2026:PHHC:034461



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CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Akshay Jindal, Senior Advocate with
Mr. Satbir Rathore, Advocate
for the appellant in RSA-3228-2017 RSA-3420-2017
RSA-5004-2017 & RSA-5005-2017.

Mr. Raman Kumar, Advocate
for Mr. Rajeev K. Kapila, Advocate
for the appellant in RSA-569-2024.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Sumit Sinha, Advocate
for the respondent(s) in all cases.

PANKAJ JAIN, J.

1. By way of instant order, I intend to dispose off the afore-captioned 05 appeals.
2. Senior counsel appearing for the parties are *ad idem* that all the appeals involve same issue(s) in the background of similar facts. For convenience, RSA-3420-2017 is being treated as lead case.
3. Defendant is in appeal aggrieved of the judgment and decree passed by both the Courts below.
4. Plaintiff filed suit for possession. As per the plaintiff, he along with other co-sharers is owner of the suit property. Defendant was in possession as a tenant over suit property in lieu of supply of cattle manure to the owners of the land. Defendant failed to supply the cattle manure and was served with legal notice under Section 106 of the Transfer of Property Act, 1882 terminating tenancy. Plaintiff, thus claims possession by ejectment of defendant from the suit property.



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5. Suit was contested by the defendant. As per the defendant, neither plaintiff is owner of the suit land, nor defendant is tenant. Defendant is occupying the property in dispute as owner. Forefathers of the plaintiff migrated from Pakistan in the year 1947. Forefathers of the defendants are inhabitants of village prior to partition and are living on the suit land after constructing their residential house. Their possession is to the knowledge of the plaintiff and their predecessors-in-interest. Plaintiff is not entitled for possession of the suit land.

6. Suit filed by the plaintiff was put to trial by the Court of the First Instance framing following issues:-

“1A. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP.

2A. Whether the suit is not maintainable in the present form? OPD

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

4A. Whether the plaintiff has no locus standi to file the present suit?OPD

5A. Whether the suit is within time?OPP

6A. Whether the plaintiff has got no cause of action to file the present suit?OPD

7A. Whether plaintiff is estopped by his own act and conduct from filing the present suit?OPD

8A. Whether the plaintiff has concealed true and material facts from the Court?OPD.

9A. Whether the suit is liable to be dismissed with special costs?OPD

10A. Relief.”

7. Plaintiffs in order to prove their ownership tendered jamabandi for the year 2000-01 Ex.P-1. Plaintiff proved copy of legal notice Ex.P-2 and reply thereto Ex.P-3 sent at the behest of defendant.



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8. Court of the First instance while returning findings on issue No.1 and 2 held that the plaintiff successfully proved his ownership over the suit property. Defendant failed to rebut the same. Defendant claimed himself to be owner in possession, but failed to lead any evidence qua his title and is thus liable to be evicted. Court of the First Instance accordingly decreed the suit filed by the plaintiff.

9. The aforesaid findings stand affirmed by the Lower Appellate Court.

10. Learned senior counsel appearing for the appellant has assailed the findings recorded by the Courts below. He refers to the written statement filed by the defendant to contend that the defendants specifically pleaded that they are residing in the suit property after raising construction. The defendant being in permissive possession of the suit property and having raised construction of permanent character, they cannot be evicted as license in their favour to possess the suit land has become irrevocable in view of Section 60 of the Indian Easements Act, 1882.

11. *Per contra*, learned senior counsel for the respondent-plaintiff submits that the argument raised is beyond pleadings. He submits that the defendants in their written statement have nowhere pleaded license in their favour. Rather the defendant denied the ownership of the plaintiff and claimed that the defendants are in possession of the suit land to the knowledge of the plaintiffs and their predecessors-in-interest as owners. He further submits that in a way, defendant pleaded adverse possession over the suit property. Their plea



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of having become owners of the suit property by way of prescription, is a plea that demolishes the plea raised in the appeal with respect to permissive possession. Courts below have thus, rightly non-suited the defendants and have decreed the suit filed by the plaintiff.

12. I have heard counsel for the parties and have carefully gone through the records of the case.

13. The only plea raised by Mr. Jindal is based upon Section 60 of the Indian Easements Act, 1882. He claims that the defendants having raised construction, the license in their favour has become irrevocable. Though the argument raised seems to be attractive at the first blush, but the same sans merit. From the records, it is evident that the plaintiff prior to filing of the suit served legal notice on the defendants Ex.P-2. As per the legal notice, plaintiff claimed that the defendant was in possession of the suit property as tenant. Defendant responded thereto which is on record as Ex. P-3. From the perusal thereof, it is evident that the defendant denied ownership of plaintiff. He questioned the title of the plaintiff and claimed to be in possession of the suit land as owner.

14. As per settled proposition of law, the parties are bound by their pleadings. There is no plea raised in the written statement regarding defendant being licensee under the plaintiff. In view thereof, this Court finds that the reliance placed by senior counsel upon Section 60 the Indian Easements Act, 1882 is without any foundational pleading and cannot be accepted.



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15. Both the Courts below have concurrently found plaintiff to be owner of the suit property on the basis of revenue record. The same also evinces that the defendant was in possession of the suit property in lieu of supplying manure. Defendant pleads to be in exclusive possession of the suit property, thus he cannot be held to be licensee. Plaintiff prior to filing of the suit, served legal notice under Section 106 of the Transfer of Property Act, 1882 upon the defendant. It is in these circumstances that the Courts below decreed the suit filed by the plaintiff.

16. Finding no merits in the present appeals, the same are ordered to be dismissed.

17. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

18. A photocopy of this order be placed on the files of other connected cases.

**(PANKAJ JAIN)
JUDGE**

06.03.2026

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Whether speaking/reasoned : Yes

Whether Reportable : No