



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 8451 OF 2011

KANTA AND OTHERS

... APPELLANT(S)

VERSUS

SOMA DEVI (DEAD) THROUGH LR. AND OTHERS

... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. The Appeal arises from the judgment dated 24.07.2010 in RSA No. 221 of 1998 before the High Court of Himachal Pradesh at Shimla.
2. Sham Sunder (Since Deceased) filed Case No. 496 of 1990 before the Court of Sub Judge 1st Class, Una. The Civil Appeal is prosecuted by the plaintiff's LRs. CS No. 496 of 1990 was at the first instance filed for perpetual injunction restraining the defendants from interfering with the peaceful possession of the plaintiff in any manner from agricultural land measuring 8 Kanals – 05 Marlas in Khewat No. 194, Khatuni No. 1029, Khasra Nos. 4647, 4701, 4702 4742 situated in Village Lohara, Tehsil Amb, District Una. The plaintiff amended the plaint to include the prayer for recovery of possession from the defendant.
3. The plaintiff's case is that he is the owner, and the co-owner is in exclusive Hisadari possession of the plaintiff. The defendants are strangers and have no right, title, or interest in the suit schedule. The cause of action for filing the suit was the threatened interference of defendants, who are

powerful, with plaintiff's possession, and refusing to admit the plaintiff's claim to the suit schedule. The first defendant resisted the suit claim in all fours, and the principal averment which has bearing for the disposal of the Civil Appeal is that the first defendant is in possession of the suit schedule, and the first defendant traces her entitlement through her husband, Late Roshan Lal. According to the 1st Defendant, Roshan Lal died about 36 years before the filing of the Written Statement, and the 1st defendant's father-in-law, as Karta of the family of the Lakhu, has granted the right of enjoyment of the suit schedule in lieu of maintenance. The right of maintenance has ripened into an absolute right.

4. The plaintiff is not in possession, and the prayer for recovery of possession is also unavailable. The Trial Court framed two issues:

"Whether the plaintiff is entitled to the decree of injunction?

Whether the suit land was Joint Hindu family property and it was given to Soma Devi for maintenance and she became its full owner in 1956"

5. Through the judgment dated 20.06.1992, the Trial Court dismissed the suit. The plaintiff filed an appeal numbered as Civil Appeal No. 124/92, 213/94/92 before the Additional District Judge, Una. The First Appellate Court, by judgment and decree dated 08.04.1998, allowed the appeal of the plaintiff. The defendant filed RSA No. 221 of 1998 before the High Court, and through the impugned judgment, the Second Appeal was allowed.

6. Hence, the Civil Appeal at the instance of the plaintiff.

7. The findings of the High Court are summarised hereunder:

7.1 The High Court found that the First Appellate Court erred in concluding that the suit land was not given to Soma Devi for maintenance. The High Court concluded that her father-in-law had granted the land in lieu of maintenance following the death of her husband. The High Court held that the right to maintenance is a pre-existing right under Shastric Hindu Law. Relying on Section 14(1) of the Hindu Succession Act, 1956, the High Court held that Soma Devi's limited interest in the property acquired in lieu of maintenance automatically ripened into absolute ownership. The High Court emphasised that Section 14(1) is of wide amplitude and covers every kind of acquisition of property by a female Hindu, regardless of whether it was possessed before or after the commencement of the Hindu Succession Act. The High Court also rejected the plaintiff's claim of succession based on a Will executed by his grandfather, holding that the plea regarding the Will was not taken in the original plaint but was introduced for the first time in the replication.

8. Mr. Mohit D Ram contends that the High Court committed an illegality by not recognising the right of the plaintiff to a 1/6th share in the plaint schedule. The plaintiff's name is entered in the revenue record, and the possession of the first defendant is Hisadari possession of the plaintiff. The alternative prayer for recovery of possession should have been entertained inasmuch as the first defendant failed to establish her plea that the suit schedule was put in her possession towards maintenance. Since the relationship between the parties is not in dispute, the recovery of possession should have been decreed.

9. Mr. Govind Goel appearing for the first defendant argues that the plaintiff having failed to prove possession has also failed to plead and prove, as to how the claim for recovery of possession in a suit filed in 1990 is maintainable. The Trial Court and the High Court have considered the crucial aspect of the matter and dismissed the suit. The prayers cannot be considered as the plaintiff failed to prove possession and did not establish when he lost possession.

10. We have taken note of the limited submissions and perused the record.

11. The suit is one for perpetual injunction, alternatively for recovery of possession. The plaintiff for the relief of perpetual injunction, along with prima facie case, balance of convenience and irreparable loss, must also prove the actual possession of the suit schedule on the date of filing of the suit. It is axiomatic that possession on the date of filing the suit is an essential requisite for granting perpetual injunction. The findings recorded are that the plaintiff was not in possession of the suit schedule property. In a suit for recovery of possession, one of the essential conditions is (i) entitlement, (ii) manner of entitlement, (iii) specifics on the date and mode of dispossession, and conversely (iv) what is the nature of possession claimed by the defendant, and how it is illegal. Admittedly in the case on hand, these pleadings are completely absent. A few bits and pieces of evidence without pleading cannot be appreciated. Therefore, the first relief is rightly rejected by reckoning the plea and proof placed by the plaintiff. To the same effect, *Maria Margarida*

Sequeira Fernandes v. Erasmo Jack de Sequeira,¹ has laid down the requisite features in pleadings and reads thus:

“69. *The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.*

70. *It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:*

- (a) who is or are the owner or owners of the property;*
- (b) title of the property;*
- (c) who is in possession of the title documents;*
- (d) identity of the claimant or claimants to possession;*
- (e) the date of entry into possession;*
- (f) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;*
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;*
- (h) If taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;*
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;*
- (j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and*

¹ (2012) 5 SCC 370.

(k) basis of his claim that not to deliver possession but continue in possession.

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75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

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77. The court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.”

(emphasis supplied)

12. Adverting to the alternative relief of recovery of possession, after perusing the plaint, we record that the plaint is bereft of the required details on the alleged date of dispossession and the basis on which recovery of possession is prayed for. In the absence of material pleadings and evidence, the suit of plaintiff is rightly dismissed.

13. After perusing the judgment of the first appellate court, we observe that the first appellate court has fastened the burden on the 1st defendant and has also drawn a few adverse inferences on the case pleaded by the 1st defendant.

Without a detailed narrative of the position in law in this behalf, we observe that the approach of the first appellate court is erroneous and failed to appreciate the nature of prayers and frame of suit.

14. For the above reasons, the Civil Appeal is dismissed. No order as to costs. Pending application(s), if any, stand disposed of.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

**New Delhi;
February 06, 2026.**