

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CSA No. 64/2013

Date of pronouncement: 30.01.2026

Date of uploading :

Devi Ditta S/o Charan Dass Batwal
R/o Chatta Gujran
Tehsil & District Jammu

.....Applicant(s)/Petitioner(s)

Through :- Mr. K Nirmal Kotwal, Sr. Advocate with
Mr. Pawan Dev Singh, Advocate

v/s

1. Pappu Ram S/o Khairati Ram
2. Pushpa Devi W/o Khairati Ram
3. Chanchala Devi W/o Papu Ram
All residents of village Chatta Gujran
Tehsil & District Jammu

.....Respondent(s)

Through :- None

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER (ORAL)

1. This Civil Second Appeal, by the appellant, arises out of a judgment and decree dated 16.09.2013, passed by the Court of learned Principal District Judge, Jammu [**“the Appellate Court”**] in file No. 89/appeal titled *“Devi Dutta vs. Pappu Ram and Others”*, whereby the 1st Appellate Court has upheld the judgment and decree dated 31.10.2012 passed by the Court of learned Munsiff, Jammu [**“the Trial Court”**].
2. Briefly stated, the facts leading to the filing of this Civil Second Appeal are that the appellant herein filed a suit, against the respondents, seeking a decree of permanent prohibitory injunction restraining the later from causing any sort of interference in the suit land measuring 10 marlas comprising of khasra no. 384 situated at village Chatha Gojran Tehsil and District Jammu.

3. It was pleaded by the appellant (plaintiff in the suit) that he was in possession of the suit land for the last three decades and had also constructed his residential house on a portion of the land, whereas rest of the suit land was being used as compound. According to the pleadings in the plaint, it was the case of the appellant that some time before the filing of the suit, he had given some land to one Ms. Ratno Devi, the daughter of his sister, for construction of a house under a Government scheme, namely, Indira Awas. The appellant allowed Ms. Ratno Devi to raise a single room in the corner of the compound on land measuring 01 marla and she was allowed to use it for residential purpose.
4. It was further pleaded that said Ms. Ratno Devi left the room unused under her lock and vanished from the scene without leaving any whereabouts. The respondents, it was pleaded, took over the possession of the room and started extending threats to the appellant that they would raise construction on the vacant piece of land.
5. On being put on notice, the respondents appeared and filed a written statement and took the plea that they had purchased 03 marlas of land, along with room constructed thereon, from Ms. Ratno Devi for a sale consideration of Rs. 40,000/- in the year 1997 and were in peaceful possession ever since.
6. On the basis of pleadings of the parties, following issues were framed by the trial Court.

i. Whether suit of the plaintiff is not maintainable in the present form? OPD

- ii. **Whether plaintiff is in possession of suit land measuring 10 marlas in survey no. 384 for the last more than three decades? OPP**
- iii. **Whether plaintiff handed over possession of 3 marlas of land out of 10 marlas on eastern side of Ratno Devi for consideration of Rs. 2500/- in the year 1995. OPD**
- iv. **Whether defendants broke open the room of plaintiff and dumped their belonging and occupied the same? OPP**
- v. **Whether Ratno Devi and her husband handed over the possession of 3 marlas of land and one room constructed over the land for consideration of Rs. 40,000/- on 05.07.1999 to defendant no. 1. OPD.**

7. The trial Court having considered the evidence led by the parties came to the conclusion that the suit filed by the appellant was not maintainable on the ground that the appellant was not in possession and, therefore, was not entitled to maintain a suit for permanent prohibitory injunction. The maintainability of the suit was decided against the appellant after having decided issue no. 2 in favour of the respondents. On the basis of the aforesaid findings, recorded by the trial Court on issue nos. 1 and 2 and also on other issues, the suit was dismissed with costs.
8. Feeling aggrieved, the appellant filed an appeal before 1st Appellate Court which was dismissed by the Appellate Court vide judgment and decree dated 16.09.2013 on the same grounds.
9. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that no substantial question

of law arises for determination in this Civil Second appeal. It is settled law that if the plaintiff claiming a decree of permanent prohibitory injunction is out of possession, a suit for injunction simpliciter is not maintainable. In the instant case, there is ample evidence on record and there are concurrent findings of fact recorded by the two Courts below that the appellant was all along out of possession of the suit land and, therefore, should have filed a suit for possession instead of seeking a decree for permanent prohibitory injunction.

10. The trial Court as well as the 1st Appellate Court have clearly appreciated the evidence on record and have returned concurrent findings of fact that the appellant seeking a decree of permanent prohibitory injunction was not in possession of the suit land and, therefore, suit for permanent prohibitory injunction was not maintainable.
11. For the foregoing reasons, I do not find it a fit case for admission of the appeal.
12. The appeal is, thus, found devoid of any merits and is, accordingly, dismissed. It is, however, clarified that dismissal of the suit shall not come in the way of the appellant to file a suit for possession in accordance with law.

(Sanjeev Kumar)
Judge

JAMMU
30.01.2026
Manik

Whether this order is speaking: Yes/No

Whether this order is reportable: Yes/No