

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.1560 of 2015 (O&M)
Date of decision: 26.08.2015

Bimla and others

... Appellants

versus

Binder and others

... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Parminder Singh-I, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The plaintiffs, who are the wife and children of one Vinod Kumar, sought for injunction contending that the suit property, which was a shop, was in their possession. The defendant was the mother of Vinod Kumar, who contended that Vinod Kumar was running his business till his lifetime and before him, his father was having the business at the shop. According to the defendant, Vinod Kumar died in the year 2003 and from then on, the mother has been running a garment shop. The 1st plaintiff contended that a fruit shop is being run by her husband and he had obtained a right to

the property by some transfer through an unregistered document and an affidavit by the vendor affirming transfer of possession. The person, who had handed over possession, was not examined, but his nephew had stated in the evidence that his uncle was too ill to come to the court and in the cross-examination, he stated that his uncle had even died. The trial court found that the 1st plaintiff's assertion regarding her possession was true on the basis of an affidavit of transfer by the vendor and the evidence of witnesses and granted the relief of injunction. The defendants had a grievance that an important document, namely, a photograph filed along with the negative and the evidence provided by the photographer that she was actually in possession of the shop and running a garment business was not duly appreciated. The appellate court affirmed the decision of the trial court.

2. The learned counsel appearing on behalf of the appellants would lay emphasis on the alleged important evidentiary value of the photograph showing the defendant's possession which was discarded by the trial court. In my view, the photographs will be dangerous mode of proof if he must undertake a forensic exercise of a party in possession in respect of immovable property. The reason is obvious that any person can simulate any property as though it is suit property and take a photograph to show himself in possession. The possession of immovable property, unlike a chattel,

could never be held physically and demonstrated by the photographs. On the other hand, the necessary indicia of possession of immovable property will be available through what are normally to be found in the custody of person in possession. If, in this case, the defendant was contending that she was running a garment shop, assessment to commercial tax for the garment business or possession of bill book for sale of the garments or any communication received from customers or suppliers at the address or evidence of witnesses who spoke about the fact that they made purchases from the shop and who would be in a position to produce documents of such purchases would go a long way to establish the said fact. It will be wholly wrong for a party to believe that on production of photographs, the party proves his possession. The court also shall not rely on any such fragile piece of evidence.

3. The point is well taken that the plaintiff who sues for injunction must establish the same. In this case, the property admittedly was held in the hands of Vinod Kumar till he died and, therefore, I would give primacy of benefit of an inference that the wife was running the business after her husband's lifetime than an older mother of the deceased. If the two courts below which are courts of facts, have also found that the plaintiffs had been in possession and granted the decree, I will find that the case projects no substantial question of law for consideration for its reversal. The

judgments of the courts below are maintained and the second appeal is dismissed.

(K.KANNAN)
JUDGE

26.08.2015
sanjeev