

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**Regular Second Appeal No.4364 of 2015 (O & M)**

**Date of Decision: *December 07, 2015***

Bhola Nath

..... APPELLANT

*VERSUS*

Rani @ Kunti & others

..... RESPONDENTS

...

**CORAM:      HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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**PRESENT:** - Mr. Aman Dhir, Advocate, for the appellant.

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**Jaspal Singh, J**

CM No.10526-C of 2015

For reasons mentioned in the application, delay of 79 days in filing the appeal is condoned.

Application stands allowed.

RSA No.4364 of 2015 (O & M)

1. The instant appeal has been preferred by plaintiff No.2 – Bhola Nath challenging judgment and decree dated February 01, 2014 passed by the trial court as well as judgment & decree dated February 12, 2015 passed by the lower appellate court, whereby the findings recorded by

the trial court have been upheld and appeal filed by the defendants against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for declaration has been dismissed.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellants that the courts below have ignored and disbelieved the evidence led by the appellant – plaintiff. In fact, plaintiffs filed a suit against the defendants seeking declaration to the effect that they are owners in possession of property bearing House No.702/2, Bagichi Kamboh, near Kali Mata Mandir, Sitla Mandir, Amritsar. Earlier, it was owned and possessed by Sadhu Ram, great grandfather of appellant – plaintiff No.2 Bhola Nath from the time immemorial. After demise of Sadhu Ram, it dwelled upon his son Babu Ram. Subsequent thereto, after the death of Babu Ram, Vidhya Parkash being his son became absolute owner and in possession of the property in suit. Vidhya Parkash also left for heavenly abode many years ago and on his death, plaintiff No.2 Bhola Nath became its owner in possession. He is son of Ms. Ram Rati, second wife of Vidhya Parkash. Ms. Ram Rati was earlier married to late Ramjet Singh and out of their wedlock, four sons namely Kala, Babu, Hem Raj, Nathu and one daughter Rani @ Kunti, were born. After her re-marriage, Ms. Ram Rati was blessed with Bhola Nath, appellant – plaintiff No.2. Infact, Vidhya Parkash was not enjoying good health and as such, he bequeathed his property in the presence of Narain Singh, father of plaintiff No.1, clearly stating that after his death, plaintiff No.2 Bhola Nath and his wife Pushpa, plaintiff No.1 alongwith their children will be the absolute owner of the property owned by him. Defendant Nos.1 and 2 have nothing to do with property and they never

approached the appellant – plaintiff and requested him that their house situated in Hindustan Basti was in dilapidated condition and they be accommodated in the suit property with clear understanding that they will vacate as and when their house will be repaired but subsequently, they flatly refused. Thus, plaintiffs are owner in possession of the suit property being successors-in-interest of Sadhu Ram and are entitled to the declaration and injunction prayed for by them which has been illegally declined by the courts below.

3. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant but finds the same to be without any substance.

4. The question which requires determination in the case in hand is whether the appellant – plaintiff is the real owner of the property in suit i.e. House No.702/2, Bagichi Kamboh, near Kali Mata Mandir, Sitla Mandir, Amritsar?

5. To substantiate their plea, both the plaintiffs namely Pushpa and Bhola Nath appeared in the witness box as PW-1 and PW-2, respectively. Besides their deposition, there is testimony of PW-3 Madan Lal who prepared the site plan of property in dispute. But, to the utter surprise, though they have claimed themselves to be owners of the property in suit but they could not place on record any document showing their ownership. Rather, it is worth-while to mention here that PW-1 Pushpa has categorically admitted during her cross examination that she has not been able to brought on record any document that Bhola Nath is son of Vidhya Parkash and/or that Ms. Ram Rati is the second wife of Vidhya Parkash. It has been categorically admitted by her there is no proof with her to establish their

nowhere. Moreover, the testimony, if any, of the plaintiffs Pushpa and Bhola Nath stands falsified from the evidence brought on record by the defendant/respondents, especially the various documents Ex.D1 to D7 which clearly establish that Ms. Ram Rati was enacted as tenant in the suit property which is owned by the Trust bagichi i.e. defendant(s). Thus, the findings recorded by the trial court and upheld by the lower appellate court do not call for any interference by this Court and same are absolutely in consonance with the evidence available on file. Rather, without any hesitation, it can be said that appellant – plaintiffs have nothing to do with the property in suit.

6. In the light of what has been discussed above, this court does not find merit in the instant appeal. Accordingly, the impugned judgments & decrees passed by the courts below are upheld. There being no merit in the instant appeal, same is dismissed with no order as to costs.

**December 07, 2015**  
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**(Jaspal Singh)**  
**Judge**