

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

RSA No.881 of 2022 (O&M)
Date of decision: 29th August, 2022

Rakesh Kumar

... Appellant

Versus

Gobind Sharma & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Lokesh Vohra, Advocate for the appellant.

MANJARI NEHRU KAUL, J.

Suit for mandatory injunction and permanent injunction filed by the plaintiff seeking direction to restrain the defendant/respondents from interfering into the peaceful possession of a house situated in Santa Wali Gali, back side of Rama Ice Factory, Barnala (hereinafter referred to as, 'the suit property') and also from restraining them from changing the nature of the suit property, was dismissed by the Trial Court vide judgment and decree dated 11.07.2019. The appeal preferred against the aforementioned judgment and decree also met the same fate and was dismissed by the Lower Appellate Court on 23.12.2021. The plaintiff is now before this Court in Regular Second Appeal. The parties to the lis hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff may be noticed in brief as thus:-

Maya Devi, mother of the plaintiff, was owner in possession of the suit property. Before her death, she executed a registered Will dated 03.08.1998 with respect to her movable and immovable property in favour of the plaintiff and thus, the plaintiff on the basis of the Will of his mother, became owner in possession of the suit property. The defendants tried to dispossess the plaintiff from the suit property and also attempted to change the nature of the suit property by demolishing it. During the absence of the plaintiff, on 08.05.2014 they demolished four rooms, staircase and verandah of the suit property shown in red colour in the site plan. Though the plaintiff requested the defendants to re-construct the suit property and refrain from interfering in his peaceful possession, however, they refused to do so. Hence, the suit in question.

In their written statement, the defendants No.3, 4, 6 and 8 denied that Maya Devi was owner in possession of the property in dispute. It was submitted that the plaintiff had filed the suit in question by misrepresenting facts and preparing a wrong site plan. It was further submitted that defendants No.3 and 4 were owners in possession of the property in dispute, having Municipal No.B-IV/184 on the basis of a Will dated 03.06.1998 executed by their father, Jagan Nath in their favour which was then registered on 05.06.1998. It was also submitted that earlier, the plaintiff had filed a Civil Suit No.175 dated 20.07.1998 for permanent injunction regarding the suit property, wherein Maya Devi, whose inheritance was being claimed by the plaintiff in the instant suit had been impleaded as defendant No.8. It was still further submitted that the aforementioned Civil Suit was dismissed by the Civil Court vide

judgment dated 12.08.2004 and pursuant thereto, the defendants No.3 and 4 had been declared as owners in possession of the property in dispute. Still further, it was contended that the Will dated 10.06.1998 had been declared to be a forged and fabricated document. The defendants submitted that the appeal preferred by the plaintiff to impugn the aforementioned judgment dated 12.08.2004 was dismissed on 13.04.2006 and even no appeal was preferred against the dismissal, as a result of which it had attained finality. Furthermore, it was submitted that the plaintiff had also filed a Civil Suit for possession of the suit property through his wife Veeranwanti by claiming her to be his attorney, which was still pending and in fact the matter in issue in the instant suit was identical to the one in that suit. It was thus, pleaded that the plaintiff who was a habitual litigant, had instituted the suit in question by concealing true facts from the Court; Defendants No.3 and 4 had been residing in the property in dispute along with their family however, since it was an old construction unfit for human habitation, some portion had caved-in on account of rain and the defendants had to demolish 85% of the property in dispute. The defendants also pleaded that the suit was barred under Order II Rule 2 CPC by the principle of res judicata.

On the basis of material and other evidence led, the trial Court dismissed the suit of the plaintiff as he failed to lead any cogent evidence in support of his claim. The lower appellate Court dismissed the appeal on the ground that the plaintiff was guilty of suppression of material facts qua the suit property, including the previous litigations;

and secondly, no cogent evidence was led by the plaintiff from which an inference could be drawn that he was in exclusive possession of the suit property or the defendants had demolished a portion of the suit property illegally. Hence, this appeal.

Learned counsel for the plaintiff/appellant has vehemently argued that both the Courts below gravely erred in discarding the Will executed by Maya Devi, mother of the plaintiff, without appreciating that presumption of truth was attached to it and such type of documents were to be acted upon. It was submitted that the impugned judgment was based upon surmises and conjectures, and the impugned judgments were cryptic and non-speaking inasmuch as the oral and documentary evidence led had not been appreciated in the right perspective.

I have heard learned counsel for the appellant and perused the relevant material on record.

This Court does not find any error in the impugned judgments and decrees for the reasons to follow. On a perusal of the impugned judgments, it is evident that the plaintiff while approaching the Civil Court at the time of institution of the suit in question, suppressed material facts not only qua the suit property, but also that the relief which was being claimed in the suit in question, had also been sought in the previous suit filed by the plaintiff for permanent injunction. Still further, the Appellate Court Barnala in Civil Appeal No.67 of 06.09.2004 titled as 'Rakesh Kumar vs. Prem Kumar etc.' returned categoric findings to the effect that the plaintiff had not been found to be in possession of the suit property in the previous suit

instituted by him for permanent injunction. While stepping into the witness box as PW-7, the plaintiff admitted that in the aforementioned Civil Appeal No.67 of 06.09.2004, the appellate Court had returned findings qua he not being in possession of the suit property in question. It may also be observed that in suit No.175 dated 20.07.1998 which was dismissed on 12.08.2004, defendants No.3 and 4 were declared owners in possession of the house in question on the basis of the Will dated 03.06.1998 executed by Jagan Nath in the said suit. The above mentioned facts make it abundantly clear that the plaintiff has not approached the Court of law with clean hands and is guilty of suppression of material facts.

On being pointedly asked, learned counsel has failed to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. Consequently, the impugned judgments and decrees are hereby affirmed and the instant appeal being devoid of any merit is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 29, 2022
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No