

413

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

**RSA No. 1655 of 1993 (O&M)  
DATE OF DECISION : 11.05.2023**

**Kanhaiya Lal (deceased) through LRs      ...Appellants**

**Versus**

**Khub Ram (deceased) through LRs      ...Respondents**

**CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present :      Ms. Hemani Sarin, Advocate,  
                         for the appellants.

Mr. Vijay Kumar, Advocate for  
Mr. Sanjay Mittal, Advocate,  
For respondent No.2.

Service of respondents No.3 to 5 dispensed with  
Vide order dated 23.07.2016.

**ARUN MONGA, J (ORAL)**

For convenience, parties herein are described as per recitals  
before learned trial Court.

2.                Having suffered adverse concurrent findings by the two  
Courts below, the defendant/appellants herein are in second appeal against  
the judgment and decree dated 14.12.1992 passed by learned trial Court,  
as upheld by learned First Appellate Court vide its judgment and decree  
dated 23.08.1993, whereby suit filed by the plaintiff for damages to the  
tune of Rs.1,25,000/- as an indigent person was dismissed.

2.1              Plaintiff/respondents filed a suit for permanent injunction  
claiming that he is owner in possession of house along with Chabutra as  
detailed in the plaint. The house was constructed more than 37 years ago

and one toddy chajja was constructed on the site along with the house and it is also owned by plaintiff. Defendant No.1-Kanhaiya threatened to raise illegal construction on the property in question.

2.3 Upon notice, defendants appeared and filed written statement taking preliminary objections that site plan produced by the plaintiff is not in accordance with the position at the spot. It was denied that toddy chajja of plaintiff is in existence over the site since the time of construction of house. It was further stated that Parwati was the owner in possession of site shown with red colour in the site in question. She sold the same along with other property to Champa Devi on 07.01.1986. It was further pleaded that plaintiff has no locus standi to file the suit; the suit is not maintainable in present form.

3. Replication was filed wherein it was stated that plaintiffs filed a suit earlier also against Municipality wherein they were held owner in possession of the site in dispute.

4. Based on the rival pleadings, following issues were framed:

*“(1) Whether the plaintiffs are owner in possession of the suit property, as alleged ? OPP*

*(2) Whether the plaintiffs have no locus standi ? OPP*

*(3) Whether the plaintiffs are stopped from filing the present suit as alleged ? OPD*

*(4) Whether the suit is not maintainable ? OPD*

*(5) Relief.*

5. The parties to suit adduced their oral as well as documentary evidence in support of their pleadings and Issues No.2, 3 and 4 were decided to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided in favour of plaintiffs and against the defendants. Consequently,

suit of plaintiffs was decreed with costs and defendants were restricted from interfering with possession of plaintiffs over the site shown with red colour in the site plan attached and for taking forcible possession by raising construction over the same.

7. Feeling aggrieved, defendants/respondent herein went in appeal and learned First Appellate Court dismissed the appeal. Hence, the instant revision petition.

8. I have heard learned counsel for parties and perused the judgments of both the Courts below.

9. In short, the contentions in this second appeal are that the learned Courts below wrongly non-suited the plaintiffs, ignored the sale deed Ex DW/1 in their favour and erred in holding that the defendant-appellants were not the owners of suit property while holding on mere conjectures and surmises that the plaintiff-respondents were its owners in possession.

10. In its judgment, learned First Appellate Court, *inter alia*, observed as under ;

“xxx

*7. I have carefully scrutinized the evidence brought on record, gone through the pleadings, judgment of the trial court and have heard learned counsel for the parties. Plaintiff and his witnesses had deposed that plaintiffs were owners in possession of the site in dispute and it was under the Todi-Chhaja constructed by them. As against it, the defendants and their witnesses have deposed that the defendants were owners in possession of the suit. property. It is not disputed that the site in dispute is under the Todi-Chhaja constructed along with the house of the plaintiffs and so the statements of the plaintiffs and their witnesses is more reliable than the statements of defendants and their witnesses. If the property in dispute had belonged to the defendants or predecansors- in interent, it is not understood as to why they would have allowed the plaintiffs to construct their Todi- Chhajan on the site in dispute. A perusal of the*

*site- plan Ex.PW4/1 would reveal that Todi-Chhajas had been constructed over a Chabutra and the site in dispute in A chubtra is towards Northern side of the house of plaintiffs and the site in dispute is towards the Wester-Northern side. It is not disputed that the plaintiff had filed a suit against Municipal Committee restraining the Municipal Committee from interfering in his possession over the chabutra in that case. The municipal Committee had claimed the site in dispute under the chabutra belonged to the Municipal committee. Kanhiya Lal one of the defendants was examined as a witnesses by the municipal committee. He had admitted in that case that Todi Chhaja was in existence over the site in dispute for the last 30 years, although he had claimed that the plaintiff had encroached upon the municipal Committee's site. That case had been decided in favour of the plaintiffs holding that plaintiff Khub Ram was the owner in possession of the property in dispute through judgment dated 19.9.1981. Even in that suit plaintiff Khub Ram had claimed that the site under Chabutra as well as the site in dispute had belonged to him. Even though defendant Kanhiya Lal had appeared as a witness in that case but he had not applied for being impleaded as a party to contest the claim in dispute that the said side in dispute had not belonged to the plaintiff. Under the circumstances it could not aid, that there is no documentary evidence in favour of the plaintiffs regarding his ownership and possession because the said documentary evidence is there in the shape of the judgment dated 19.9.1991 together with the copy of plaint and site-plan in that suit, even when the fact is not disputed that the Todi-Chhaja I.e. hanging projection attached with the house of the plaintiff was there over the site in dispute It suggested that the site in dispute belonged to him or that at least it was in his possession for the last 37 years. Once the possession of the plaintiffs was proved, it was for the defendants to prove that they or their predecessors-in-interest were owners in possession of the suit property. The sale deed dated 7.1.1976 showing that the said site had allegedly been sold by Parwati to Smt. Champa Devi is not sufficient to rebut the ownership claim of the plaintiffs, unless the defendants had proved that Parwati was owner of the said site. For the reasons discussed above, I find that learned trial court had correctly appreciated the evidence and had reached the correct conclusion that plaintiffs were owners in possession of the property in dispute. Issue No.1 was, therefore, rightly decided in favour of the plaintiffs. I, therefore, affirm the findings of learned trial court on this issue.*

xxx

11. It would be seen that the contentions herein were also raised before, duly considered and repelled by the learned Courts below giving reasons therefore. I am inclined to agree with the cogent and

convincing reasons given and the concurrent view taken by them consistent with record and applicable law.

12. No grounds are made out for interference with the concurrent findings of fact recorded and the view taken by the learned Courts below against the defendant-appellants.

13. The appeal is, therefore, dismissed.

14. Pending application/s, if any, shall also stand disposed of.

15. No order as to costs.

**MAY 11, 2023**  
Shalini

**(ARUN MONGA)**  
**JUDGE**

**Whether speaking/reasoned : Yes/No**

**Whether reportable : Yes/No**