

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

**RSA-1667-2022 (O&M)
Date of decision:09.01.2024**

Kuldeep Singh

... Appellant

Vs.

Jaspal Kaur & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. N.K. Verma, Advocate for the appellant.

...

SUKHVINDER KAUR, J.

1. This is a regular second appeal filed against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was partly decreed.

2. Brief facts as per averments in the plaint are that the plaintiff filed a suit of permanent injunction alleging that he was in continuing actual, peaceful, physical, uninterrupted possession of the suit property as detailed in the head note of the plaint. Property described as letter 'X' is a residential house and property described as letter 'Y' is a commercial property. Earlier father of the plaintiff, namely, Labh Singh and prior to him grandfather of the plaintiff were in possession. In March, 1955, Diwan Chand S/o Hari Ram tried to interfere in the possession of the plaintiff over the property at letter 'X'. A civil suit was filed by Labh Singh which was decided in his favour. Plaintiff is residing in property/house at letter 'X' since his childhood and now he is residing along with his wife and two children. Plaintiff is running an electric shop under the name of 'Pappi Electric Works' in one

shop/property at letter 'Y'. Another shop without roof adjoins the vacant space in property at letter 'Y' and there is courtyard of the plaintiff behind the shops. The defendants have no concern with the suit property but they were interfering into the possession of the plaintiffs.

3. Vide judgment and decree dated 17.12.2019, the suit of the plaintiff was partly decreed by the trial Court and defendants were restrained from forcible dispossessing the plaintiffs from property at letter 'X' and property/shop at letter 'Y' except in due course of law. The appeal preferred before the first Appellate Court was also dismissed vide judgment and decree dated 12.05.2022 and judgment of the trial Court was upheld. Hence, the present second appeal.

4. It has been contended by the learned counsel for the appellant that the electric meters in both the properties i.e. property at letter 'X' and 'Y' are in the name of the plaintiff/appellant. He has further contended that the claim of respondent No.1 is fake that she was using candle light in her room, as a person cannot live without availability of the necessary amenities. He has urged that the Courts below have also not considered the fact that out of 5 defendants, only defendant No.1 has stepped into the witness box and the remaining witnesses of the defendants were from the distant areas. Meaning thereby defendants could not muster the support of any witness from the locality where the suit properties were situated. So such witnesses of the defendants could not have been relied upon. He has further submitted that the room existing behind the shop was a part of the suit property shown vide letter 'Y' and had been constructed during the lifetime of the father of the plaintiff and plaintiff is in the physical possession of the same. The entire

courtyard of the suit property shown vide letter 'Y' is enclosed by boundary wall and the plaintiff is in possession over the same. It is also contended that the DDR Ex.D-33 is the created evidence by defendant No.1 just to strengthen her claim which cannot be relied upon and has contended that the suit of the plaintiff is liable to be decreed in totality.

5. I have heard learned counsel for the appellant at length and perused the records thoroughly.

6. There is a concurrent finding of both the Courts below that the plaintiff is in possession of the property at letter 'X' and one shop/property at letter 'Y' and suit of the plaintiff has been decreed qua the said properties. But the plaintiff is claiming that he is in possession over the entire property. Besides the oral evidence, nothing has been brought on record to prove his possession over the entire property. The electricity meter which has been installed in the property admittedly is pertaining to one shop only. Though, it has been claimed by the plaintiff that he had constructed a room in the vacant space, but no evidence regarding raising of the said construction has been produced by the plaintiff. As per DDR Ex.D-33 brought on record by the plaintiff, her residence has been shown in one room without any electricity connection. This fact has not been disputed that the vacant shop does not have any electricity connection. This is also not the case that he is residing in the said room. Rather from the copy of the DDR on record, it appears that the said room is being utilized by the defendant. It has been rightly observed that the DDR cannot be treated as a self serving statement as it is made in due course of law. So in these circumstances, both the Courts have rightly held that the possession of the plaintiff over the property at

letter 'X' and the shop in his possession in property 'Y' is proved and possession of one room in the vacant space is proved to be with defendant No.1.

7. No question of law much less substantial question of law arises for determination in the present second appeal. The appeal is without merit and is hereby dismissed.

(SUKHVINDER KAUR)
JUDGE

09.01.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |