



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

106

**RSA-1343-2016 (O&M)
Date of Decision : 30.08.02024**

Harbhajan Kaur and others **Appellants**

versus

Joginder Partap Singh **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. M.K. Dogra, Advocate
for the appellants.

PANKAJ JAIN, J. (Oral)

1. Plaintiffs are in appeal.
2. Plaintiffs filed suit for permanent injunction seeking decree against the defendant from interfering in the peaceful possession over a suit land in form of the double storey house as detailed out in the plaint.
3. It was pleaded by the plaintiffs that they are in peaceful possession of the suit property for last more than 45 years. The property is situated within the Lal Lakeer of the village. The suit property was in dilapidated condition and was reconstructed by the plaintiffs about 04 years back. In order to show their possession, they relied upon various documents like passport etc. It was further claimed that the defendant who has no right, title or interest to the suit property is a non-resident Indian, residing in Canada. He threatens to dispossess the plaintiffs from the suit property.
4. Suit was contested by the defendant. Defendant claimed that the plaintiffs are cheaters and extortionists who want to usurp the movable



and immovable properties of their own relatives. Defendant is a real brother of late Ravinder Partap Singh-husband of plaintiff No.1 and father of plaintiffs No.2 and 3. Property was owned by late Sardar Hukam Singh the predecessor-in-interest of the defendant and Ravinder Partap Singh. Late Sardar Hukam Singh was employed in PWD Department of Punjab Government. On his transfer to Ludhiana and thereafter to Patti, the family travelled with him. However, Ravinder Partap Singh who was working with Marina Sewing Machine at Ludhiana remained stationed at Ludhiana. Defendant in the year 1973, purchased the house in question through his father after he was settled in Canada. Parents of the defendant were living in the house in question. Plaintiffs used to visit defendant in the said house. It was defendant who constructed the suit property in the year 2008. The defendant is in Canada. The plaintiffs under the garb of ration card etc. procured by them with an intent to usurp the property, have filed the present suit.

5. On the basis of the pleadings, Trial Court framed following issues:-

- “1. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP (inadvertently onus was shifted upon defendant instead of plaintiffs, be ordered to be read as OPP)
2. Whether the present suit is not legally maintainable in the present form? OPD.
3. Whether the plaintiffs are stopped by their act and conduct? OPD.
4. Relief.”

6. Trial Court after analyzing evidence on record held that the defendant proved his ownership of the suit property on the strength of



registered sale deed dated 08.03.1973 Ex.DW1/A whereas the plaintiffs have failed to prove any documentary evidence with respect to their ownership. Apart from that, the plaintiffs claimed their ownership on the basis of adverse possession, thereby admitting the ownership of the defendant. However, having failed to prove that their possession was open and hostile, they are not entitled for grant of decree of permanent injunction.

7. In appeal preferred by the plaintiffs, Appellate Court has affirmed the findings of the Trial Court.

8. Counsel for the appellants-plaintiffs while assailing the impugned judgment and decree submits that it being a suit for permanent injunction, Trial Court ought to have considered the overwhelming evidence produced on record by the plaintiffs to prove their possession in form of the testimonies like passport etc. The Courts below having failed to consider vital piece of evidence erred in law.

9. I have heard counsel for the appellants and have carefully gone through the records of the case.

10. The only cogent evidence produced on record by the appellants are the electricity bills which are in the name of one Hazari Lal. Hazari Lal is father of Lakhpai Rai and from whom the defendant purchased the suit property. Thus, the Courts below have rightly discarded the electricity bills produced by the appellants to hold that they are in possession of the suit property. The defendant while appearing as DW-1 explained that the plaintiffs being his close relatives used to reside in the house with his permission as he was away in Canada. Thus, the defendant having been proved to be true owner of the suit property, the



Courts below rightly declined to grant injunction in favour of the plaintiffs-appellants against the true owner. Pure findings of fact have been recorded by the Courts below after appreciating the evidence in its true perspective.

11. Scope of second appeal under Section 41 of the Punjab Courts Act, 1918 came up for consideration before Apex Court in ***Randhir Kaur Versus Prithvi Pal Singh & Ors.*** 2019(17) SCC 71 wherein it was held as under :-

*“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni**, 1980 AIR (Punjab) 85 set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:*

*"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya** [AIR 1959 Supreme Court 57.], **Madamanchi Ramappa v. Muthaluru Bojjappa** [AIR 1963 Supreme Court 1633.], **Bithal Dass Khanna v. Hafiz Abdul Hai** [1969 S.C. Notes 481.] and **Afsar Shaikh v. Soleman Bibi** [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a*



of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

13. In view of above, there is no ground to interfere in the present appeal and the same is ordered to be dismissed.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

30.08.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No