

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-1342-2021 (O&M)****Date of decision: 17.11.2025****Rekha Rani through her Special Power of Attorney...Appellant(s)****Vs.****Vijay Kumar****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Hardeep Singh Dhillon, Advocate
for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant for permanent and mandatory injunction, has been dismissed by both the Courts below.

2. The facts as pleaded in the plaint are that the suit property is located on the roof of a shop situated within the municipal limits of Municipal Committee Pehowa. The shop is on the ground floor which is in the possession of the defendant. The suit property which is owned and possessed by the plaintiff vide registered Sale Deed No. 2118 dated 14.09.2010. It is pleaded that previously, the suit property was a residential house which was owned and possessed by one Sh. Shyam Lal vide Takseem Khangi dated 15.07.1979 and 10.09.1978. After his death, the same was owned by his widow Smt. Prem Lata and his other legal heirs. Smt. Prem Lata had previously filed a **Civil Suit No. 972 of 2009**



titled as **Smt. Prem Lata vs. Vijay Kumar** for permanent injunction against the present defendant restraining him from demolishing the shop which is situated on the ground floor; and residential house which is located on the roof of the shop. It was the stand of the defendant in the said suit that he wanted to construct a new shop in place of old for which he wanted to demolish the entire structure including the house of Prem Lata and he gave undertaking dated 12.12.2009 Ex.P2 before the Court that he shall complete the construction within 6 months and also construct the house of Prem Lata at his own expense. Thus, the entire structure was demolished; defendant raised construction of shop but maliciously did not construct the house of Prem Lata within the stipulated time. Consequentially, Prem Lata had filed a contempt application No. 11/10 stating that defendant had failed to abide by his undertaking. During the pendency of the said contempt petition, the suit property was sold by Prem Lata in favour of the plaintiff vide Sale Deed No. 2118 dated 14.09.2010 with mutual understanding between them that the house on the suit property will be built by the defendant. During the pendency of the Contempt Petition, Prem Lata had expired which resulted in contempt petition to be dismissed in default. The defendant had now started threatening the plaintiff for illegal and forcible possession. Accordingly, plaintiff had preferred the present Civil Suit on 16.07.2011.

3. Upon notice, defendant had appeared and filed written statement resisting the suit *inter alia* averring that the suit property was originally owned and possessed by Maha Brahmins belonging to



Ramchandra Thamba. It was partitioned; property measuring 60-65 feet in length and 10 feet in width came to the share of Prem Lata while property measuring 22 feet in length and 10 feet in width, on the southern side of the property of Prem Lata fell to the share of defendant. The northern side was possessed by Prem Lata. There was accommodation on the shop of the defendant which was given to Prem Lata by father of the defendant for residential purpose, during her lifetime as Prem Lata was a close relative. The status of Prem Lata was that of licensee, thus vendee of Prem Lata has no right or title in the suit property. The access to that terrace i.e. suit property is from the ground floor on the northern side of the property owned and possessed by Prem Lata. The entire construction was old, therefore, defendant had to demolish it in order to reconstruct anew. Prem Lata was resentful towards defendant, therefore she filed suit against him seeking permanent injunction in order to stop the reconstruction of the new shop. Plaintiff has no right, title over the suit property therefore, her suit is not maintainable. Any obligation of agreement with Prem Lata for purpose of residence of the suit property was in her capacity as a licensee for lifetime. Thus, the suit of the plaintiff is liable to be dismissed.

4. Learned Trial Court vide judgment and decree dated 31.08.2016 had dismissed the suit of the plaintiff. The appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 04.12.2019. Hence, the present Second Appeal by the plaintiff.



5. It is *inter alia* submitted by learned counsel for the appellant /plaintiff that the learned Courts below were in a patent error in non-suiting the appellant as they failed to appreciate that the defendant had duly given his undertaking that he shall raise construction of house on top of the shop for Smt. Prem Lata. It is submitted that it is proved on record that the appellant had purchased the suit property from Prem Lata vide registered Sale Deed dated 14.09.2010. It is contended that as such, the said undertaking of the defendant shall now be transferred to the appellant. The defendant during his cross-examination as DW1 has himself admitted to the undertaking given by him in the previous litigation. It is submitted that in this regard, learned Courts below have failed to consider the testimony of two important witnesses i.e. Rajender Kumar PW4 one of the vendors of registered Sale Deed dated 14.09.2010 Ex.P4; and Sultan Singh, Clerk of Municipal Committee Pehowa PW6. PW4 had specifically deposed that vendor of the suit property had handed over the possession of the suit property to the plaintiff at the time of registration of Sale Deed. PW6 had brought the register on record of the suit property in dispute from 1982 to 2012 Ex.PW6/A and Ex.PW6/B which clearly proves that from 2010 onwards plaintiff has been shown as owner of the suit property and defendant has no concern whatsoever with the same.

6. Learned counsel for the appellant further submits that the Ld. Courts below did not consider that the respondent/defendant, who has appeared as DW1 admitted that he does not know the assessment register number of his property situated under the property in dispute. He



also admitted that the shop situated under the property in dispute is in existence before my birth and likewise, chobara is also in existence since old time and as such, once the ownership of Shyam Lal s/o Ram Chander has been proved over the property in dispute, then the respondent has no concern whatsoever in the property in dispute.

7. It is further submitted by learned counsel for the appellant that the Ld. Courts below did not consider that the respondent himself admitted in his cross-examination regarding the factum of undertaking given by him before the Court that at the time of construction of my new shop, the portion of Prem Lata, which was demolished, would be constructed within 6 months for her, but I had not constructed her portion, as she has already sold the same. The respondent has also admitted that he has not challenged the sale deed executed by Prem Lata till date.

8. It is contended that the learned First Appellate Court has failed to apply its independent mind to the dispute in hand and had merely relied upon the findings of the learned Civil Judge (Junior Division), Pehowa while dismissing the appeal of the plaintiff. He, accordingly, prays that the present Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

9. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in detail.

10. I find no merit in the submissions made on behalf of the appellant/plaintiff. Prem Lata had executed a registered Sale Deed No.



2118 dated 14.09.2010 (Ex.P-4) in favour of the plaintiff. As such, it was proven on record that plaintiff is owner of the suit property. Contrary stance was taken by the defendant that vendor of the plaintiff Prem Lata had no right to execute Sale Deed as she had only limited right to enjoy possession of the suit property during her lifetime and that too in the capacity of licensee. However, although defendant disputed the ownership of the plaintiff, the same cannot dilute the title of the plaintiff as admittedly defendant has not challenged the ownership of the plaintiff over the suit property.

11. As regards undertaking dated 12.12.2009 Ex.P2 given by the defendant in **CS No. 972 of 2009**, the record bears out that the said civil suit was dismissed in default by the Civil Court vide order dated 03.05.2011. Thus, the said suit was not decided on merits. As such, defendant was not bound by any decision/direction of the Civil Court to abide by his statement. Even if it is assumed that the defendant has made such undertaking, the same shall operate vis-a-vis Prem Lata and not qua the present plaintiff who was not a privy to the arrangement between Prem Lata and the defendant. Moreover, the recital in the Sale Deed dated 14.09.2010 executed by Prem Lata in favour of the plaintiff does not make mention of any “mutual understanding” between Prem Lata and the plaintiff that any such right was transferred by Prem Lata in favour of the plaintiff. Thus, any undertaking given by the defendant in the previous litigation could not have any binding effect qua the plaintiff in the present case. Thus, suit of plaintiff for mandatory injunction directing the

defendant to build the house for the plaintiff on the suit property, was rightly dismissed.

12. Last but not the least, the plaintiff has even been unable to prove his possession over the suit property. Plaintiff has failed to produce any document or even from the oral evidence it cannot be adduced that plaintiff is in possession over the suit property. As such, suit of the plaintiff for grant of permanent injunction was also dismissed.

13. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

14. Pending applications, if any, stand disposed of.

17.11.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No