

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2398 of 1992 (O&M)

Om Parkash (Deceased) through his Legal Representatives
... Appellant(s)

Versus

Puran Chand and Another
... Respondent(s)

AND

2. Regular Second Appeal No. 866 of 1996 (O&M)

Puran Chand
... Appellant(s)

Versus

Om Parkash (Deceased) through his Legal Representatives and Another
... Respondent(s)

Reserved On: 29.11.2024
Pronounced On: 16.01.2025

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Chetan Slathia, Advocate
for the appellant (In RSA-2398-1992) and
for respondent No.1(a) to 1(c) (In RSA-866-1996).

Mr. Sanjiv Kumar Aggarwal, Mr. Nissim Aggarwal and
Mr. Ojas Bansal, Advocates, for the appellant
(In RSA-866-1996) and for the respondents
(In RSA-2398-1992).

Anil Kshetarpal, J.

1. Factual Background

1.1 The Regular Second Appeals in the States of Punjab, Haryana
and Union Territory, Chandigarh are governed by Section 41 of the Punjab

Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

1.2 With the consent of the learned counsel representing the parties, two connected Regular Second Appeals i.e. 2398 of 1992 and 866 of 1996 shall stand disposed of by this common order.

1.3 Regular Second Appeal No. 2398 of 1992 has been filed by the defendant against the concurrent findings of fact arrived at by both the courts below while decreeing the plaintiff’s suit for the grant of decree of permanent injunction restraining the defendant from interfering in his exclusive possession of the house.

1.4 Regular Second Appeal No. 866 of 1996 filed by the defendant to assail the correctness of the judgment passed by the Appellate Court, which, in turn, has reversed the judgment of the Trial Court.

1.5 In order to comprehend the issues involved in the present case, a small family tree and brief facts are required to be noticed:-

Nihal Chand			
Smt. Shanti (Wife)			
Vasu Ram (Son			
Om Parkash	Krishan Kumar	Bashi alias Avinashi Lal	Puran Chand

1.6 Puran Chand filed a Civil Suit No 215 of 1986 against Vasu Ram with regard to the suit property which was decreed as Vasu Ram admitted Puran Chand’s claim on 18.07.1986. This led to the filing of two suits. Puran Chand, on 04.09.1986, filed a suit for permanent injunction,

whereas Om Parkash filed a suit for declaration that he is owner in possession of the house and the decree passed on 18.07.1986 is null and void.

1.7 It has come on record that Vasu Ram purchased a plot on which the house was constructed vide registered sale deed dated 24.12.1965. It has also come on record that in the year 1965, Om Parkash was 14 years old, whereas Bashi alias Avinashi Lal was 20 years old. It is the case of Om Parkash that when Krishan Kumar separated from the family, he was given house in New Adarsh Nagar and subsequently, Vasu Ram from the joint income of Om Parkash and Puran Chand purchased the plot in question. The old allotted house (which is not the suit property) was given to Puran Chand and Bashi, jointly, whereas the plot in question was given to the plaintiff in family settlement which was arrived at six/eight years ago.

1.8 A joint written statement was filed by Puran Chand and Vasu Ram claiming that the property was purchased by Vasu Ram from his own funds and in the family settlement, he gave this property to Puran Chand who became its exclusive owner. The Trial Court dismissed the suit filed by Om Parkash, whereas decreed the suit filed by Puran Chand and Vasu Ram. The appeal filed against the decree for permanent injunction was dismissed on 09.09.1992, whereas the appeal filed in a suit for declaration was accepted by the First Appellate Court on the following grounds:-

- I) Though the electricity bills are in the name of Vasu Ram, but these documents do not conclude Vasu Ram's possession

- II) Dharam Chand, an official from the Food and Supply

Department, proved the ration card and voter card which lead to conclusion about possession of Om Parkash.

III) Om Parkash has proved that he constructed the house on the plot in dispute.

IV) The plot in question was purchased from the joint earning and in the family settlement, the house in question was given to Om Parkash as supported by Bashi.

2. Analysis and Discussion

2.1 Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book along with the requisitioned record.

2.2 The learned counsel representing the respective parties have filed their respective synopsis.

2.3 The Appellate Court has erred in observing that the electricity connection installed in the plot in question is in the name of Vasu Ram, but that itself does not conclude it was in Vasu Ram's possession. Once the plot was purchased by Vasu Ram he got installed the electric connection, it became a relevant factor in determining possession.

2.4 Similarly, the First Appellate Court has erred in observing that in the ration card and voter list, Om Parkash is shown to be the resident of the house in question and, therefore, their possession is proved. In the considered view of this court, the aforesaid conclusion is based on assumptions and is insubstantial.

2.5 The next reason assigned by the First Appellate Court is also erroneous because mere oral evidence of mason and others would not prove

that Om Parkash constructed the house. It is the case of the plaintiff that when the house was constructed, Vasu along with his three sons jointly used to reside. Thus, the finding of the First Appellate Court is contradictory. Similarly, there is no evidence to conclude that Om Parkash was independently earning in the year 1965 because he was only 14 years old. There is no evidence that Om Parkash started working at the age of 14 years.

2.6 The First Appellate Court has also erred in assuming that in the family settlement, the property was given to Om Parkash because Bashi supported the stand of Om Parkash. It is evident that Bashi alias Avinashi has been supporting Om Parkash. However, that will not be sufficient to assume that the suit property was given to Om Parkash in a family settlement. Om Parkash has not proved the date, month or year of the alleged family settlement.

2.7 Moreover, it is evident that the First Appellate Court has based its findings on mere conjectures and surmises as it has used the expressions “probable”, “appears” and “presumption”.

2.8 The First Appellate Court has also erred in observing that Puran managed the collusive decree by influencing his father Vasu Ram. It would be noted here that Vasu Ram appeared in suit for grant of decree of injunction. He categorically stated that in the family settlement, the suit property has fallen to the share of Puran who has been serving him. The statement of Vasu Ram was recorded in the year 1988 i.e. after a period of two years from the decree dated 18.07.1986. Despite lengthy cross-examination, his credibility could not be impeached. He has categorically

work as a timber merchant, owning and operating a flour mill and a fodder cutting machine. He was not given any suggestion that Om Parkash was also working with him in the year 1965. The certified copy of deposition of Vasu Ram was also produced in the suit for grant of decree of declaration as Ex.D6 because Vasu Ram at that time had died.

2.9 The First Appellate Court has completely overlooked the statement of Vasu Ram (Ex.D6). It would be noted here that when Puran Chand filed a suit on 13.06.1986 claiming declaration that the property had fallen to his share in a family settlement, Vasu Ram appeared and filed an admitting written statement. He also deposed admitting Puran Chand's case which resulted in decreeing the suit on 18.07.1986. The First Appellate Court has set aside the decree on the ground that Puran managed the collusive decree by influencing his father, namely Vasu Ram, who was by then an infirm and old person. However, this finding is based upon no evidence. Vasu Ram appeared before the Court in the year 1986 and thereafter, in November, 1988. He reiterated the fact that the house in question was given to Puran Chand in a family settlement.

2.10 The First Appellate Court has also overlooked that in a suit for the grant of decree of injunction, both the Courts below decreed Puran Chand's suit holding that he is in possession of the property and is owner of the same by virtue of Civil Court decree dated 18.07.1986. In the injunction suit, issue No.1 was "whether the plaintiff is owner and in possession of the suit property as alleged by the plaintiff in the plaint"? In this suit, the plaintiff was Puran Chand. Both the Courts below decided this issue in

the First Appellate Court.

3. Decision

3.1 Keeping in view the foregoing discussion, the result is inevitable. Consequently, Regular Second Appeal No. 866 of 1996 is allowed and the the judgment passed by the First Appellate Court is set aside and that of the Trial Court is restored. Whereas Regular Second Appeal No. 2398 of 1992 shall stand dismissed. Resultantly, the civil suit filed by Puran Chand for the grant of decree of permanent injunction shall stand decreed, whereas the suit filed by Om Parkash for the grant of decree of declaration shall stand dismissed.

3.2 The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

January 16, 2025
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No