

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****119****RSA-127-2020 (O&M)****Date of decision: 11.08.2025****Asha Rani and others****...Appellant(s)****Vs.****Raj Kumar****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vikas Kumar Gupta, Advocate
for the appellants.

NIDHI GUPTA, J.**CM-333-C-2020**

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 5 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is
supported by an affidavit of applicant/appellant No.1(iv), the same is
allowed and delay of 5 days in refiling the accompanying appeal is
condoned.

RSA-127-2020 (O&M)

Present Second Appeal has been filed by the
appellant/plaintiffs against the concurrent judgments and decrees of the
learned Courts below; whereby the suit filed by the appellants for
declaration to the effect that plaintiffs are in joint possession to the extent



of 6/7th share in the suit house as described in the head note of the plaint, has been dismissed with costs by both the Courts below.

2. Brief facts of the case as pleaded in the plaint are that the plaintiff No.1 is the widow of Sat Pal Bhogal; whereas plaintiffs No. 2 to 6 and the sole defendant are respectively the daughters and son of late Sh. Sat Pal Bhogal. It was the case of the plaintiffs that Sat Pal had been allotted a plot measuring 334 sq. yds. vide Allotment Letter dated 16.06.1998. Sat Pal had deposited a sum of Rs.3,340/- vide Bank Draft dated 15.06.1998 in favour of the Executive Officer, Municipal Council Dina Nagar. However, the revenue record shows that the aforesaid land is entered as *Shamlat* Deh which is transferred in the name of the Municipal Committee, Dina Nagar vide Punjab Government Notification dated 30.04.1976. It was pleaded that it had been decided by the State Government that the aforesaid land would be divided amongst the 294 families who were settled on the land. Sat Pal was one amongst the 294 families who were occupying the said plot No. 27 measuring 334 sq. yds. After allotment of aforesaid plot, Sat Pal had constructed his house. It was pleaded in the plaint that later on Satpal had brought his married daughter/ plaintiff No.5, Sneh alongwith her husband to the suit house. Plaintiff No.5 had remained in the said house from May 1981 till March 1997 during which period her daughter was born on 16.03.1987 and son was born on 06.07.1995 in aforesaid plot No. 27. It was pleaded that accordingly, plaintiff No.5 along with her family were in actual possession of the disputed house. It was alleged that the defendant, his wife and



other associates had started issuing threats to take possession of the disputed house forcibly and illegally. As such, Sat Pal had filed a suit for permanent injunction on 01.03.1997 in which vide order dated 03.03.1997 ex parte ad interim injunction was granted in favour of Sat Pal. Defendant alongwith other defendants had put in appearance in that suit on 18.03.1997. During the pendency of the said suit, Sneh Lata had fallen seriously ill because of which she alongwith her family had gone to another house of Sat Pal. By taking advantage of absence of Sneh Lata/plaintiff No.5, defendant alongwith his associates had taken possession of disputed house on 16.03.1997; and had illegally taken away household articles of plaintiffs valued @ Rs.2,37,600/- which were not returned; and defendant had also demolished construction raised by plaintiffs. During pendency of the said first Civil Suit, application under Section 151 CPC was filed by Sat Pal for restoration of possession of disputed house. However, the suit of Sat Pal for permanent injunction was dismissed vide judgment and decree dated 31.01.2006. The appeal against the said judgment was dismissed as withdrawn on 20.12.2008. During the pendency of the said appeal, Satpal expired intestate on 30.12.2006 leaving behind plaintiffs and defendant as successors-in-interest, but defendant proclaimed himself to be absolute owner. Satpal had even published in the newspaper on 05.05.1996 that he had disinherited the defendant as Sat Pal was having strained relations with the defendant and his family. Plaintiffs requested defendant to admit the



claim of the plaintiffs, but defendant refused. With these averments, present Suit was filed on 20.10.2008.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Trial Court vide judgment and decree dated 09.01.2014 had dismissed the suit of the plaintiffs with costs. The Appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Gurdaspur vide judgment and decree dated 18.02.2019. Before the learned lower appellate Court, the plaintiff had also filed an application for additional evidence, which is also dismissed by the learned lower appellate Court alongwith the Civil Appeal on 18.2.2019. Hence, the present Second Appeal by the plaintiffs.

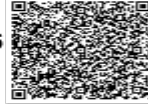
4. It is *inter alia* submitted by learned counsel for the appellants that the learned Courts below were in patent error in dismissing the suit of the plaintiffs. It is submitted that the appellants had sought to bring on record additional evidence before the learned lower appellate Court and had accordingly filed an application under Order 41 Rule 27 CPC (Annexure A1) which was also dismissed by the learned Additional District Judge vide judgment dated 18.02.2019. Learned counsel submits that the said application could not have been dismissed as the said evidence was crucial for proper adjudication of the present case. It is submitted that vide the said application, appellants had sought to bring on record the judgment and decree dated 20.07.1989 passed in Civil Suit filed by Sat Pal, Raj Kumar and Mohinder Pal in para 16 of which possession of Sat Pal (father of the plaintiffs No. 2 to 6 and defendant) over the suit property



was admitted. It is submitted that in view of the said admitted fact, injunction could not have been denied to the plaintiffs and suit of the plaintiffs could not have been dismissed. It is accordingly prayed that the present Regular Second Appeal be allowed; and the impugned judgments and decrees be set aside.

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

6. I find no merit in the submissions made on behalf of the appellants. By way of additional evidence, the plaintiff had sought to bring on record the judgment dated 20.7.1989 passed by the learned Additional District Judge Guardaspur in Civil Suit filed by Sat Pal and Raj Kumar against Mohinder Pal and Municipal Committee, Dina Nagar. However, it is established position in law that additional evidence is to be permitted, especially at appellate stage, if applicant is able to show that despite due diligence, the said evidence was not available to the applicant during trial. In the present case, admittedly, Satpal was plaintiff in the judgment date 20.7.1989. Thus, the said judgment dated 20.7.1989 was very much within the knowledge of the plaintiffs. However, no reason has been given as to why the same was not produced before the trial court. Thus, application of the plaintiffs was correctly dismissed by the learned lower Appellate Court. In this view, I find support from judgment passed by Hon'ble Supreme Court in ***"Ajitsinh Chehuji Rathod vs. State of Gujarat and another"*** ***Law Finder Doc Id # 2478634***; wherein it is held that *"Additional evidence at appellate stage-Appellate Court not required to come to aid*



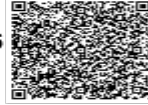
*and assistance of appellant for collecting defence evidence at his behest.” I further find support from a judgment passed by Gujarat High Court in **“Javedbhai @ Javedkhan Babubhai Saiyad and others vs. Sikandarali Kasamali Kureshi and another”**, Law Finder Doc Id # 2665575; wherein it is held that “Additional evidence in appellate court can only be admitted under Order XLI Rule 27 of CPC if conditions such as refusal by lower court to admit evidence, lack of knowledge despite due diligence, or necessity for pronouncing judgment are satisfied.”*

7. The application for leading additional evidence filed on 24.01.2019 (Annexure A-1) was therefore, correctly dismissed by the learned lower appellate Court vide judgment dated 18.02.2019 as, although Sat Pal may have been in possession of the suit plot during the survey conducted by the Government, however ownership of Sat Pal over the suit property has nowhere, been admitted. The application of the plaintiffs for leading additional evidence was dismissed by the learned lower appellate Court in judgment dated 18.02.2019 on the following grounds: -

“5. Plaintiffs/appellants have sought a decree for declaration that they are joint owners in possession of suit property to the extent of 1/7th share each averring that this property was previously owned by Shri Sat Pal Bhogal and they being his legal heirs are entitled to succeed 1/7th share each in the same. Their suit has been dismissed by holding that Shri Sat Pal Bhogal had no concern with suit property. Production of judgment passed by the court of Shri A. S. Sodhi, learned Additional District Judge, Gurdaspur is sought on the ground



*that in a suit filed by Mohinder Pal, defendant/respondent Raj Kumar alongwith his father Shri Sat Pal Bhogal had taken up a plea that Shri Sat Pal Bhogal is owner in possession of suit plot, so he has admitted that suit property was ownership of Shri Sat Pal Bhogal and that way they are entitled to inherit 1/7th share each from the same. Said suit was filed prior to 3.9.1984 and appeal was dismissed on 20.7.1989. It has been mentioned in para No. 2 of said judgment that Raj Kumar had admitted that his father was found in possession of suit plot during a survey got conducted by the government, but he has nowhere admitted him to be owner of the same. It is mentioned therein that Raj Kumar had submitted site plan for raising construction over plot No. 27 which was sanctioned. However, there is verdict of the civil court that Rai Kumar was in possession of the suit plot and Sat Pal Bhogal was non-suited. Appeal preferred by him against said verdict has concededly been withdrawn by present applicants/appellants and they are estopped to rely upon such alleged admission, which otherwise nowhere state that Shri Sat Pal Bhogal was owner of the suit property. So far as second judgment passed by the court of Shri Rajinder Pal Singh Gill, Civil Judge (Junior Division), Gurdaspur is concerned, same relates to other properties of Shri Sat Pal Bhogal. Why suit property was not included in that suit is not explained by appellants/applicants. After going through record of this case it emerges on surface that none of the ingredient of Order XXXI rule 27 of Civil Procedure Code is established. In light of these facts and circumstances production of judgments is not necessary for just and final conclusion of this appeal and ratio of law laid down in cases of **Parminder Singh versus Maman Chand & Others 2017 (1) - Law Herald - 698** and **Bhuru versus Chandgi Ram & Ors***



2016 (4) Law Herald (P&H) 1636 is of no help to appellants/applicants. Hence, this application is dismissed being devoid of merits.”

8. Even otherwise, plaintiffs can derive no benefit from the judgment dated 20.7.1989. It has been contended on behalf of the plaintiffs that vide judgment dated 20.07.1989 passed by the learned Additional District Judge Gurdaspur (sought to be brought on record as additional evidence), as per the findings recorded in para 16 thereof, Sat Pal was found to be owner of the plot No. 27 as the same was allotted to him by the Municipal Committee. However, the said assertion of the plaintiffs is contrary to the pleaded case of the plaintiffs in the present civil suit. Para 16 of the judgment dated 20.07.1989 reads as follows: -

“16. The plaintiffs had claimed themselves to be in possession of the site in dispute and applied for the sanction of the plan for raising construction on the site and the documents placed on the record show that the site plan was actually sanctioned by the Municipal Committee and the plaintiff Raj Kumar was allowed to raise the construction on the site. It is also not disputed that the site in dispute belongs to the Municipal Committee and as per the State Government Policy it was decided to sell the land belonging to the Municipal committee as per state government policy it was decided to sell the land belonging to the Municipal committee to the occupiers, who belong to the weaker sections of Society. The committee had also carried out a survey and found that 294 families were occupying the Municipal committee land. It is not disputed that the plaintiffs were found to be occupying plot no. 27 and the name of Sat Pal



plaintiff is mentioned in the survey report at survey report at serial no. 27. Bansi Lal Clerk of the Municipal Committee appearing as PW-9 admitted that plot no. 27 was allotted to Sat Pal measuring 334 square yards. (Emphasis added)

9. From a reading of the above, it is clear that nowhere it is stated therein that Sat Pal was owner of the said plot or that any letter of allotment had been issued in his favour. All that is stated is that Satpal was found to be in occupation of the disputed plot. Further, in the above said judgment date, 20.7.1989, it has been recorded that Bansi Lal clerk of the MC as PW9 had admitted that the said plot no. 27 had been allotted to Satpal. However, it is the case of the plaintiffs in the present suit that the disputed plot no. 27 was allotted to Satpal vide Allotment Letter dated 16.6.1998. It is therefore not clear as to how Bansi Lal could have made the above statement in the previous suit. Further, as noted above, even the said letter dated 16.6.1998 has not been produced by the plaintiffs. In fact, no letter of allotment has been produced by the plaintiffs in the present suit. Moreover, it is the plaintiffs' own case that the suit property was previously owned by the Municipal Committee.

10. Furthermore, plaintiffs have relied upon Allotment Letter dated 16.06.1998. However, the said alleged letter of allotment has not seen the light of the day. Rather, PW1/plaintiff No.3 has categorically admitted that there is no such document on judicial file which could prove that Sat Pal was owner of the disputed property. PW2/plaintiff No. 5 has also made similar admission. PW5 Jasbir Singh, Junior Assistant from



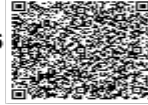
Municipal Committee has stated that list relied upon by the plaintiffs Ex.PW5/F has been discarded by the Municipal Corporation; as per which suit property was never allotted to Sat Pal Bhogal; and the alleged demand draft deposited by Sat Pal with the Committee, has not been encashed. Therefore, as ownership of the suit property in favour of Sat Pal Bhogal was not proved, question of its succession by the plaintiffs did not arise.

11. Last but not the least, as per the plaintiffs, the defendant was in possession of the suit property. It is settled law that once the other party is in possession of suit land, suit for declaration without seeking consequential relief of possession, is not maintainable.

12. Even otherwise, the present second Appeal is liable to be rejected as this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) Through LR's and others (SC): Law Finder Doc Id # 2034559***; has held that: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the



second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

(Emphasis added)

13. Learned counsel for the appellants is unable to controvert or dispute the above said facts, findings and the legal position.

14. In view of the above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Appeal stands **dismissed**.

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

11.08.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No