



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

(114)

**RSA No.4462 of 2019 (O&M)
Decided on: 25.03.2025.**

Balwan Singh (since deceased) through LRs

...Appellants

Vs

Shanti Devi and others

...Respondents

AND

RSA no. 5736 of 2019 (O&M)

Balwan Singh (since deceased) through LRs.

...Appellants

Vs

Shanti Devi and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sandeep Kumar Yadav, Advocate
and Ms. Sangeeta Yadav, Advocate
for the appellant (s).

VIKRAM AGGARWAL, J (ORAL)

The issue involved in the aforesaid appeals being identical, they are being decided by way of this common judgment. Whereas one appeal assails the dismissal of the counter-claim filed by the appellants/defendants, the second is against the suit of the respondents/plaintiffs having been decreed by the First Appellate Court.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. The dispute in the present case is as regards land measuring 5 Marlas (fully described in the plaint) situated in the revenue estate of village

Kurahwata, Tehsil and District Mahendergarh (hereinafter referred to as the suit property). The same was owned and possessed by one Jai Ram. The daughters of Jai Ram namely Shanti Devi and Bimla Devi instituted a suit for permanent injunction against one Balwan Singh and Satyanarayan sons of Sawalram, restraining them from interfering in their possession over the suit property. The case set up by the plaintiffs was that their father Jai Ram was owner in possession of the suit property and had raised some construction thereupon. The suit property had been allotted to Jai Ram by the Government. The defendants, despite having no concern with the suit property were attempting to interfere in the peaceful possession of the plaintiffs over the said property. After the death of Jai Ram, the plaintiffs were residing in their matrimonial home and taking undue benefit of the same, the defendants were interfering in the peaceful possession of the plaintiffs over the suit property. Under the circumstances, the suit for permanent injunction was filed.

4. The suit was opposed by the defendants. The case set up by them was that on 10.08.1981, Jai Ram had sold the suit property for a total sale consideration of Rs.900/- to the defendants and a document in this regard was also executed. It was averred that the said document had been executed in the presence of witnesses and Jai Ram had duly put his thumb impression upon the same. It was averred that the defendants were in possession of the suit property ever since. A counter claim was also filed by the defendants seeking an injunction against the plaintiffs restraining them from interfering in the peaceful possession of the defendants over the suit property.

5. From the pleadings of the parties, following issues were framed:-

- (1) Whether the plaintiff is entitled to the decree of injunction as prayed for by him in the plaint? OPP***
- (2) Whether counter claim filed by defendant No. 3 is liable to be succeeded ?OPD-3.***
- (3) Whether plaintiff has no locus standi and cause of action to file the present suit? OPD***
- (4) Whether the suit is not maintainable ?OPD***
- (5) Whether the suit is time barred ?OPD***
- (6) Relief.***

6. Parties led their respective evidence. The trial Court, vide judgment and decree dated 05.12.2015, dismissed the suit as also the counter claim. In appeal, the suit filed by the plaintiffs was decreed whereas the counter claim was dismissed leading to the filing of the present two Regular Second Appeal.

7. I have heard learned counsel for the appellant.

8. Learned counsel submits that the First Appellate Court erred in decreeing the suit filed by the plaintiffs. Learned counsel has referred to the judgment of the trial Court and has submitted that there was no illegality in so far as injunction was refused to the plaintiffs, though the counter claim was erroneously rejected. Learned counsel submits that apart from the two Jamabandies (Ex.P-1 and Ex.P-2), there was no evidence to prove that the plaintiffs were in possession of the suit property. On the contrary, it has come on record and was duly noticed by the trial Court that the plaintiffs were living in their matrimonial home and, therefore, under the circumstances, they could not have been in possession of the suit property. Learned counsel submits that mutation Mark A was not proved in

accordance with law and, therefore, no reliance could have been placed upon the same. Learned counsel further submits that the execution of the document Ex.DW1/B dated 10.10.1981 vide which Jai Ram had sold the suit property to Sawal Ram, father of the defendants was duly proved but despite the same, the Courts did not place reliance upon the same. He submits that under the circumstances, the judgments passed by the Courts are not sustainable. He submits that the suit filed by the plaintiffs deserves to be dismissed and the counter claim filed by the defendants deserves to be allowed.

9. I have considered the submissions made by learned counsel representing the appellants, but find the same to be devoid of merits.

10. The ownership of the suit property is not in dispute. It was earlier owned by Jai Ram, father of the plaintiffs. Jai Ram is stated to have expired in 1990. Mutation Mark A is stated to have been effected in favour of the plaintiffs thereafter. Though, the said mutation has not been proved in accordance with law, however, there is no dispute as regards the fact that the plaintiffs are the daughters of Jai Ram. Once the property was owned and possessed by Jai Ram, there is no evidence to the contrary that the plaintiffs did not step into his shoes or that they were ever divested of the possession. The document (Ex.DW1/B) vide which Jai Ram is stated to have sold the suit property to the defendants cannot be relied upon, for, any document vide which immovable property worth more than Rs.100/- is transferred is compulsorily registerable. In the absence of the same, the same could not have been read in evidence and no reliance could have been placed upon the same. Apart from the said document and the bald statement of the defendants, there was no other evidence to prima facie show that the

defendants were the owners in possession of the suit property. In view of the same, the Courts did not commit any illegality or irregularity in dismissing the counter claim. In view of the fact that the suit property was owned by Jai Ram and plaintiffs are the daughters of Jai Ram, learned First Appellate court did not commit any illegality by granting them the relief of permanent injunction. Merely because the plaintiffs were married and were living in their matrimonial homes could not be construed to be a factor indicating that they were not in possession of the suit property. If such an argument was to be accepted, no one would ever be able to prove possession over an immovable property.

11. Under the circumstances, I do not find any reason to interfere in the findings recorded by learned First Appellate Court.

In view of the same, finding no merit in the present appeals, the same are dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

March 25, 2025

Rekha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No