

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****202****RSA-2473-2010 (O&M)****Date of decision: 04.09.2025****Naurang Rai****...Appellant(s)****Vs.****Haryana Urban Development Authority****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Ajai Jain, Advocate for the appellant.

Mr. Baldev Raj Mahajan, Sr. Advocate for
Mr. R.S.Longia, Mr. Daanish Mahajan, and
Ms. Harita Dhanda, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Regular Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellant for permanent injunction, has been dismissed by both the Courts below.

2. Learned counsel for the appellant submits that learned Courts below were in error in dismissing the suit of the appellant as they failed to appreciate that the appellant had come into possession of the suit property vide Conveyance Deed duly executed and registered by the respondent in his favour. It is submitted that the fact that the appellant was owner in possession of the plot in question was proved from the oral evidence of Ran Singh PW1, Anil Kumar Handwriting and Fingerprints



Expert PW2, and plaintiff himself as PW3. It is contended that it was proved on record that the plaintiff had purchased a plot from defendant/respondent after depositing all the instalments; upon which Conveyance Deed was executed and registered in favour of the appellant by the Estate Officer, HUDA in which it is clearly mentioned that possession of the plot was handed over to the appellant. Even, Allotment Letter No. 7930 dated 04.07.1980 was issued by the Administrator New Mandi Township, Haryana regarding handing over possession of the plot to the plaintiff. Thus, ownership and possession of the plaintiff over the suit property stood proved beyond doubt on the basis of cogent and convincing evidence. Yet, suit of the plaintiff has been dismissed. It is contended that in this circumstance decree of permanent injunction could not have been denied to the plaintiff.

3. Learned Senior Counsel appearing on behalf of the respondent vehemently opposes submissions made on behalf of the plaintiff and submits that clear findings have been given by the learned Courts below that the documents relied upon by the plaintiffs, were forged and fabricated. It is submitted that the plaintiff had failed to produce any evidence to prove his possession let alone his ownership over property. It is accordingly prayed that the present Appeal be dismissed.

4. Learned counsel for the appellant opposes the above submissions on behalf of the respondent and submits that the very issuance of notice by the respondent to the plaintiff proves possession of the plaintiff over the suit property. Learned counsel further relies upon



judgment of the Hon'ble Supreme Court passed in **Kayalulla Parambath Moidu Haji v. Namboodiyil Vinodan (SC): Law Finder Doc Id # 1875225**; wherein it has been held that in a suit for injunction, complicated questions of fact and law relating to title, cannot be adjudicated upon. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant/plaintiff.

6. Briefly stated, plaintiff had filed suit for permanent injunction seeking to restrain defendant from forcibly and illegally interfering in the possession of the plaintiff over the residential plot No. III/105 B measuring 1K situated in C Block Sirsa/suit property. It was the contention of the plaintiff that he had purchased the plot in an open auction dated 21.03.1980 for a total sale consideration of Rs.45,000/-; pursuant to which an auction allotment letter No. 7930 dated 04.07.1980 was issued by Administrator, New Mandi Township, Haryana in this behalf. It was further pleaded that after receiving the entire sale price, Conveyance Deed was executed by the defendant which was also registered in the office of Sub Registrar Sirsa at Sr. No. 4442 dated 24.02.2001. Possession of the property was also delivered to the plaintiff. Therefore, plaintiff was owner in possession of suit property.



7. Defendant had denied the entire claim of the plaintiff *inter alia* denying that plaintiff had purchased suit property in open auction; or that any consideration was paid in lieu thereof; or that any letter of Allotment is issued. It was categorically contended that allotment No. 7930 dated 04.07.1980 was a forged and fabricated document. Payment of instalment was also denied. Execution of Conveyance Deed dated 24.10.2001 was also denied and it was stated that the same was a forged document. Delivery of possession was also denied; and it was stated that the defendant was owner in possession of the suit property.

8. In respect of the disputed case raised by the parties, the following findings of the Trial Court as contained in paras 14, 19, 20 and 21 of the judgment dated 10.08.2009 are relevant which read as follows: -

“14. The plaintiff himself appeared in the witness box as PW3 and tendered into evidence his affidavit Ex. PW3/A reiterating the contents of the plaint. He specifically stated that the plot in question was purchased by him in an open auction for a sum of Rs.45,000/-Allotment letter No. 7930 dated 04.07.1980 was duly issued by the Administrator, New Mandi Township, Haryana in this regard. He also testified that conveyance deed dated 24.10.2001 was executed in his favour by the defendant and the possession of the plot was also delivered to him by the defendant. He also deposed that he has raised construction of boundary wall over the plot. In his cross-examination, the witness stated that he is not aware who has auctioned the plot. He had deposited a sum of Rs. 11,000/- through draft but of which bank he does not remember. He does not know in whose name the draft was



prepared nor he can give the number of the draft. He has no receipt of the draft. He had deposited the amount in three instalments but of how amount of each instalment was paid he is not aware. He is also not aware as to when these instalments were paid. The payment of instalments was made through drafts. He had obtained receipts from HUDA but cannot produce the same. He does not remember as to when the last payment was made. He had deposited the instalments within three years of the auction. The department used to send letters regarding deposit of instalments but he does not have those letters. He could not get the registration of the plot earlier as he did not have the money.

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19. *After hearing the learned counsel for the parties and scrutinizing the material available, this Court is of the view that the plaintiff has failed to prove his case. The plaintiff could not show that he had purchased the plot in question. He has failed to produce any payment slip to show that any payment was made by him with the department. The plaintiff could not produce any document whatsoever to show that the plot in question was ever allotted to him. The alleged allotment letter No. 7930 dated 04.07.1980 (Mark PX) has not been proved by the plaintiff in accordance with the provisions of Evidence Act. Moreover, the defendant has shown that allotment letter No. 7930 dated 04.07.1980 (Ex.D2) was issued in favour of one Daljit Singh regarding plot No. 106. In his cross-examination as PW3 the plaintiff has pleaded ignorance regarding the payments made by him qua the plot in question. Had the plot in question ever been purchased by plaintiff and had he made any payment*



whatsoever qua the said plot, the plaintiff would certainly have produced any receipt of payment or particulars of the draft. If the plaintiff does not have the receipt with him, he could have got this fact proved/ascertained from the concerned department or from the concerned bank from which the drafts were issued. But the plaintiff has not done so, which only indicates that he was not allotted the plot in question in any auction.

20. *So far as the Conveyance Deed Ex.PW3/B is concerned, it does not carry the signatures of witnesses cited on behalf of the defendant nor it carries the signatures of the plaintiff on the last page. The said Conveyance Deed is only shown to have been signed by D.D. Gaur, Estate Officer but he never visited the Tehsil Office. DW1 though admitted in his cross-examination that Estate Officer never visits Tehsil Office for registration of the Conveyance Deed. That may be the case but at least the Conveyance Deed should have got the signatures of any witness on behalf of the department who had witnessed the Conveyance Deed. Though names of two officials of the defendant have been mentioned but they did not put their signatures over the same. Even the plaintiff has not produced and examined the other two witnesses cited on his behalf namely Vijay Kumar and Jagdish Chander. Had the Conveyance Deed been executed and registered in its true spirit the plaintiff would have examined both these witnesses to prove its authenticity. However, it has not been done so. It is well settled that the plaintiff has to stand at his own legs and he cannot take advantage of the weakness in the case of the defendant.*

21. *So far as the possession of the plaintiff over the plot in question is concerned, again the plaintiff has not been*



able to show his possession over the plot in question. Though he has alleged that he is in possession over the plot in question and has raised construction of boundary wall over the same but the plaintiff has not been able to prove this fact by leading any cogent evidence. Self serving statement of PW3 is not sufficient to prove this fact.”

9. The above said findings of fact have been affirmed by the learned lower Appellate Court in para 11 of its judgment dated 22.1.2010, which reads as follows: -

“11. Coming to the testimony of PW3, he came with a stand that he had paid the entire auction price of the plot in question and had got it allotted by an open auction. However, he failed to mention the Auction Officer and the persons accompanying him. He also failed to disclose the number of persons participating in the alleged auction. He also failed to disclose the name of the then officer of the HUDA at the time of alleged auction. He also could not disclose the name of the bank from which he got prepared the draft of Rs.11,000/- for deposit as 1/4th price of the plot in question. He also failed to disclose the name of the person or the authority in whose favour, the alleged draft was prepared. As per him, he was not in possession of the receipt issued by the concerned department for the above stated amount. As per him, although, he had paid the remaining price of the plot in question in three instalments but he failed to disclose the amount of each instalments. He also deposed that he had obtained the receipts from the HUDA department but could not produce the said receipts. He also could not disclose as to when he had deposited the last instalment of the plot in



question. He also could not disclose the name of the official of HUDA who had allegedly issued the alleged receipts. He did not remember even the names of the persons who were there in HUDA at the relevant time. As per him, he got the Conveyance Deed executed on 24.10.2001. Although, he deposed that he had deposited all the instalments of the plot in question within the requisite time, yet, he deposed that he could not get the Conveyance Deed executed in his favour due to paucity of funds. He appeared to be in self contradiction regarding the stand taken by him. He deposed that he will produce the witnesses to the Conveyance Deed in question namely Jagdish and Vijay Kumar but despite that, he did not do so. All the above said facts go to point out that the said witness is not a reliable witness. It being so, his testimony, for the purpose of the case in question, cannot be taken into consideration. Hence, the argument of Shri Sharma cannot be accepted.”

10. Reliance of the plaintiff upon the judgment of Hon’ble Supreme Court in **Kayalulla Parambath Moidu Haji’s case (supra)** is misplaced as the said judgment is distinguishable on law and facts. In any event, a positive finding has been given that possession of the plaintiff was not proved. It has also been contended by learned counsel for the plaintiff that possession of the plaintiff is proven from the issuance of Notice by the respondent to the plaintiff. However, no such Notice has been brought to the notice of this Court. All that has been stated in the plaint is that “..... about a fortnight prior to the filing of the present suit, the defendant started openly threatening to oust the plaintiff from the



plot in dispute.” In the plaint there is no mention of any Notice issued to the plaintiff.

11. Even otherwise, present Second appeal is liable to be dismissed on the short ground that 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) (SC): Law Finder Doc Id # 2034559** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellant.

12. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

13. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

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

04.09.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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