

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****126****RSA-2387-2025 (O&M)****Date of decision: 15.07.2025****Vipin Sharma****...Appellant(s)****Vs.****Pardeep Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kunal Dawar, Advocate for the appellant.

Mr. Lupil Gupta, Advocate for respondents No.1 to 3.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiffs, for possession, has been decreed by both the Courts below.

2. Learned counsel for the plaintiffs/respondents No.1 to 3 appearing on behalf of the caveator files Vakalatnama in Court today, which is taken on record.

3. Briefly stated facts of the case are that plaintiffs had filed a suit on dated 3.9.2016 seeking possession and direction to the defendant to vacate suit property and to handover its actual, peaceful possession to the plaintiffs; and also to pay damages/mesne profit for use and occupation of the suit property till delivery of possession to the plaintiffs.

4. It was the pleaded case of the plaintiffs that Mrs. Madhu Nagrath was owner in possession of the suit property by way of Sale Deed



No. 2398 dated 27.06.1989 registered in the office of Sub-Registrar, Gurgaon. In July 2011, Mrs. Madhu Nagrath had given suit property on oral lease to the defendant on month-to-month basis at rent of Rs.3,000/- p.m. which was initially paid in cash. However, since July 2015, no payment was made by the defendant. In November 2015, defendant had started unauthorised construction on suit property without the knowledge or consent of Mrs. Madhu Nagrath. Accordingly, she had filed a suit for permanent injunction before the Id. Civil Judge, Gurgaon; whereby vide order dated 16.11.2015, the petitioner was restrained from raising further construction over the leased premises and the next date of hearing was fixed as 28.03.2016. However, in the interregnum, the plaintiffs had purchased the suit property from Mrs. Madhu Nagrath through her GPA vide registered Sale Deed No. 26169 dated 20.01.2016; who had then stepped into the shoes of Mrs. Madhu Nagrath. Despite repeated requests, defendant had flatly refused to vacate the suit property and hand over its physical actual peaceful vacant possession to the plaintiffs. Hence, the present suit was filed on 03.09.2016.

5. Upon notice, the appellant had appeared and contested the suit primarily on the plea that he had become owner of the suit property by way of adverse possession as he had been in open and continuous possession of the disputed property to the knowledge of the plaintiffs for the last more than 20 years from the time of their father. Defendant had raised certain preliminary objections regarding concealment of facts, maintainability, cause of action, locus standi, estoppel, non-joinder and



misjoinder of parties etc. It was further alleged that Sale Deed dated 20.01.2016 was disputed, forged and fabricated. It was averred that he and his family had been in continuous and peaceful possession of entire suit property for over 20 years to the knowledge of the previous owner and the plaintiffs, thereby extinguishing any right of the plaintiffs, and entitling him/defendant to ownership by way of adverse possession. Further it was stated that following the death of his father in 2011, the defendant and his two brothers had partitioned the suit property and carried out construction work. Upon learning of a court's stay order, the defendant had halted further construction. Accordingly, dismissal of the suit was prayed for.

6. No replication was filed by the plaintiffs.

7. On the basis of pleadings of the parties, following issues were framed by the learned trial Court on 21.02.2017: -

1. Whether the plaintiffs are entitled to a decree for possession as prayed for?OPP.

2. Whether the suit is maintainable in the present form?OPD

3. Whether the plaintiffs have no cause of action to file the present case?OPD

4. Whether the plaintiffs are estopped from filing the present suit by their own acts and conduct?OPD

5. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction?OPD

6. Whether the plaintiffs have suppressed the true and material facts and not come to the court with clean hands? OPD



7. Relief.”

8. Vide judgment and decree dated 02.09.2023, Id. Additional Civil Judge (Senior Division), Gurugram decreed the suit of the plaintiff with costs and a decree of possession was passed in favour of the plaintiffs and against the defendant, by virtue of which, defendant was directed to vacate the suit property and to handover its actual vacant, peaceful & physical possession to the plaintiffs within 3 months of passing of the judgment. The appeal filed by the defendant was dismissed by the learned Additional District Judge, Gurugram vide judgment and decree dated 31.05.2025. Hence, the present Second Appeal by the defendant.

9. It is firstly submitted by learned counsel appearing on behalf of the appellant/defendant that the learned trial Court vide judgment and decree dated 02.09.2023 had granted 3 months' time to the appellant to vacate the suit premises. It is submitted that the appeal against the said judgment, has been dismissed only on 31.05.2025. Therefore, period of three months has not expired. Yet, the respondents/plaintiffs with malafide motive, have filed Execution Petition even before the expiry of 3 months' time. It is submitted by learned counsel for the appellant that plaintiffs were duly informed by the appellant that Regular Second Appeal has been filed and is pending before this Court. Despite that, execution was filed by the plaintiffs. Learned counsel relies upon judgment dated 3.3.2014 of this Court in ***“Subhash Chander and others vs. M/s. Active Promoters Pvt. Ltd.”*** Law Finder Doc Id # 624876; wherein, in para 33 it is held as under: -



*"Hon'ble Supreme Court in **Ram Kumar Agarwal and another v. Thawar Das (dead) through LRs, AIR 1999 Supreme Court 3248**, in identical case of specific performance, has held as under:-*

"During the course of hearing, the learned counsel for Thawar Das vehemently resisted the appeals by submitting that the decree under appeal as passed by the High court has been put to execution and sale deed in terms of the decree has been executed and therefore the appeals do not deserve to be allowed. We find no merit in this plea. The judgment of the High Court was pronounced on 21.9.1983. The sale deed in compliance with the judgment of the High Court appears to have been executed on 21.4.1984 through intervention of the court, that is, by taking out execution of the decree. Petition seeking special leave to appeal along with prayer for interim relief was filed in the Supreme Court on 2.1.1984. On 30.9.85 leave to appeal was granted and while directing notices to be issued to the respondents, this Court had also directed execution of the judgment and decree of the High Court to remain stayed if not already executed Merely because the decree under appeal has been executed for want of stay order from the superior court the right of the judgment debtor to prosecute the appeal is not lost without there being something to show that the judgment debtor had waived or consciously given up his right of prosecuting the appeal."

(Emphasis added)

10. It is further submitted by learned counsel for the appellant that a categorical plea of adverse possession had been taken by the appellant in the written statement. No replication was filed thereto. Yet,



no issue regarding adverse possession was framed by the learned trial Court. It is submitted that in view of the definite averment of the appellant that he had become owner of the suit property by way of adverse possession, issue in this regard was mandatorily required to be framed by the learned trial Court. Non-framing of such an issue renders the impugned judgments illegal, for improper adjudication.

11. Learned counsel for the appellant also submits that it is established position in law that in the first appeal, the learned Additional District Judge, Gurugram is required to give issue wise findings. However, that has not been done in the present case. Learned counsel accordingly submits that the present Regular Second Appeal be allowed; and the impugned judgments and decrees be set aside.

12. Ld. counsel for the respondents/plaintiffs opposes submissions made on behalf of the defendant and submits that now fresh warrant of possession qua the suit property has been issued; and the matter is fixed before the Executing Court for 17.07.2025. Therefore, the present Regular Second Appeal has been rendered infructuous.

13. No other argument is raised on behalf of the parties.

14. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellants.

15. Primarily, three arguments have been raised by learned counsel for the appellant. The first plank of argument of the appellant is that even if execution petition has been filed by the respondent, the



present second appeal is prosecutable. In support, learned counsel for the appellant has relied upon judgment of this Court in ***Subhash Chander's case (supra)*** rendered on 3.3.2014. It is my considered view that the said contention of the appellant is misconceived. The Rajasthan High Court by way of subsequent judgment dated 27.11.2017 in "***Sundar and others vs. Vinod Kumar and others*** Law Finder Doc Id # 1436906, has held that if the decree under challenge has already been executed, second appeal becomes infructuous. The relevant para 5 of the said judgment is as under:

*"5. Counsel has drawn attention of the court at para No. 25 of the Judgment delivered by the Hon'ble Apex Court in the case of **Shipping Corporation of India Ltd. v. Machado Brothers and others**, AIR 2004 Supreme Court 2093 which reads ad-infra:-*

"25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under section 151 of CPC to bring to the notice of the Court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the Court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not."



16. In an even more recent judgment dated 6.5.2022, the Andhra Pradesh High Court in “**Maddula Venkateswarl vs. Kona Apparao**”, **Law Finder Doc Id # 1984570** has expressed a similar view, holding that:

“As execution proceedings have attained finality, revision petition is not maintainable - Executing Court satisfied that petitioner failed to remove constructions from the E.P.Schedule Property, though sufficient time to demolish the construction was granted - Executing Court recorded a categorical finding that petitioner caused obstructions for removal of the constructions - Said finding, based on material on record, Court cannot interfere with the same by re-appreciating the evidence which is not permissible, in a proceeding under Article 227 of the Constitution of India - There was no perversity in the order under Revision as the Executing Court have gone through the entire material available on record and arrived at the conclusions by recording cogent reasons.”

17. Accordingly, in the said case, it was held that the Civil Revision Petition was not maintainable in view of the fact that the Execution Proceedings had attained finality.

18. As such, given the admitted fact that in the present case the Execution Petition is pending final disposal on 17.7.2025, for all intents and purposes, the present second appeal is not maintainable. However, be that as it may, this Court shall consider the present appeal on merits as well, and deal with each argument raised by the appellant.

19. The second contention of the appellant is that appellant had become owner of the suit property by way of adverse possession. In this regard, it may first be pointed out that the defendant in his testimony as DW3 had categorically stated that Madhu Nagrath was the owner of the



suit property through registered Sale Deed; and voluntarily stated that suit property had been purchased by his father from Mrs. Madhu Nagrath for a valuable sale consideration. Notwithstanding the fact that the appellant was unable to provide any details/ proof with respect thereto, in complete contradiction of the above stand, the appellant has simultaneously taken plea of adverse possession. It is my view that once the Defendant in his cross examination has testified that suit property was purchased by his father for consideration from the predecessor of the Plaintiffs (for which Defendant has failed to bring any evidence to prove the said fact), but as the Defendant has entered the property under permissive possession as stated in his testimony, thus he cannot set up the plea of adverse possession. Even otherwise, there is nothing on record to remotely suggest that possession of the defendant over the suit property was hostile in nature. The Ld. 1st Appellate court dismissed the appeal of the Appellant/Defendant while observing that the plea of adverse possession, which requires unequivocal and hostile possession to the knowledge of the true owner, was not substantiated by any concrete act showing ouster or denial of title. On the contrary, the defendant's deposition in his cross examination that his father had purchased the property from Madhu Nagrath undermines the very foundation of a hostile claim. It implies a permissive or negotiated entry rather than hostile occupation. The onus was upon the defendant as to lead cogent evidence or proof of purchase of suit property by his father. But in this regard also, he has led no evidence.



20. As regards the contention of the defendant that no issue was framed regarding adverse possession, the same is covered in the first issue framed by the learned trial Court "*Whether the plaintiffs are entitled to a decree for possession as prayed for? OPP.*"; and even in the 3rd issue "*Whether the plaintiffs have no cause of action to file the present case? OPD.*". Further, there is nothing on record to indicate that defendant had raised any objection regarding framing of improper issues; or any challenge was laid to the issues framed by the learned trial Court at the relevant time. As such, said plea is not available to the defendant at this stage.

21. It may also be pointed out that ownership of the plaintiffs over the suit property is undisputedly established from the evidence of PW2 Pramod, Clerk (Municipal Corporation, Gurgaon), who had brought the summoned relevant record including documents Ex.PW2/A and Ex.PW2/B. From the oral and documentary evidence produced by PW2, it was established that plaintiffs are owners of the suit property vide registered Sale Deed dated 20.01.2016 Ex.P1 executed by Krishan Kumar GPA holder of Madhu Nagrath in their favour. PW2, the Clerk from Municipal Corporation Gurgaon corroborated the plaintiffs' ownership by producing property tax notices and assessment records (Ex.PW2/A and Ex.PW2/B). Plaintiffs further proved title of Smt. Madhu Nagrath through previous registered Sale Deed dated 27.06.1989 Ex.P2. PW4 Liyakat Ali, the Registration Clerk had proved GPA/ Ex.PW4/A executed by Madhu Nagrath in favour of Krishan Kumar through whom suit property was sold



by Madhu Nagrath to the plaintiffs. PW4 had produced the original record and confirmed that GPA was properly registered. He had further deposed that no complaint was made to the Registering Authority in respect of the said GPA. Defendant had even conducted no cross-examination of PW4 that can raise any doubt about the authenticity of the record. From the above facts, ownership of the plaintiffs of the suit property is irrevocably established.

22. It may be further pointed out that Mrs. Madhu Nagrath filed an eviction petition under the Rent Act on 11.01.2016. In response to which the Appellant/Defendant denied the tenancy. In view of this denial Mrs. Madhu Nagrath withdrew the eviction petition on 24.02.2016. As such, since the defendant has even denied that he is a tenant in the suit premises, he is unable to explain in what capacity he is occupying the suit premises. Further the Id. 1st Appellate Court held that the defendant, in his written statement filed in earlier litigation categorically denied the existence of tenancy and instead claimed ownership. So, when a person in possession repudiates the title of the owner and denies tenancy, the landlord is not precluded from filing a civil suit for possession on the strength of ownership. In such cases, the bar of the Rent Act does not apply because the jurisdiction of the Rent Controller is ousted by the defendant's own stand denying the relationship of landlord and tenant. Therefore, the suit for possession before the civil court was competent, and the objection raised by the defendant is legally unsustainable in view of his own pleading.

23. As regards the last contention of the defendant that issue wise findings have not been returned by the learned lower appellate Court, the same is also liable to be rejected, as a perusal of the judgment dated 31.05.2025 shows the same to be a comprehensive, detailed judgment in which analysis of each issue has been done in depth by the learned lower appellate Court.
24. In view of the above, I find no ground is made out to interfere in the concurrent findings of learned Courts below.
25. The present Regular Second Appeal is hereby **dismissed**.
26. Pending applications, if any, stand disposed of.

15.07.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No