

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****209****RSA-1893-2012 (O&M)****Date of decision: 02.08.2025****Sona Devi and another****...Appellant(s)****Vs.****Basanti Devi****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Maninder Singh Saini, Advocate for the appellants.

Mr. Ashok Malhotra, Advocate for the respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendants against the judgment and decree dated 10.04.2012 passed by the learned Additional District Judge, Yamunanagar at Jagadhri; whereby the Civil Appeal filed by the respondent/plaintiff against the judgment and decree dated 28.04.2010 passed by the learned trial Court dismissing the suit of the respondent/plaintiff with costs, has been allowed.

2. Brief facts of the case are that respondent/plaintiff had filed a suit for possession of a room forming part of plot No. 97 situated at Bakshi Mohalla, Mustafabad, Tehsil Jagadhri, District Yamuna Nagar (hereinafter referred to as 'the suit property'); **and** for permanent injunction restraining the defendants from changing the nature of suit property in any manner. It was pleaded in the plaint that the plaintiff is owner in possession of the suit property. Previously the suit property/plot No. 97



was owned and possessed by her mother-in-law Ganeshi Devi which was allotted to her on 23.11.1955 by the Rehabilitation Department. Ganeshi Devi along with her son Dogar Mal/husband of the plaintiff lived there and raised construction thereupon. Since marriage, the plaintiff is also residing in the house. Ganeshi Devi and husband of the plaintiff had expired; and plaintiff along with her children continued to reside in the said house as owner. It was pleaded that the defendants had purchased the adjoining plot Nos. 98 and 99 vide registered Sale Deeds from Devinder Kumar etc. It was alleged that by taking undue advantage, the defendants had demolished the room of the plaintiff and thrown away the goods of the plaintiff and had affixed their door on the same. It was pleaded that plaintiff had also got demarcation conducted on 20.01.2007, as per which suit property belonged to the plaintiff, and the defendants had encroached upon the same illegally and unlawfully in excess of their share. Although plaintiff had requested the defendants many times to accede to her request, however to no avail. With these pleadings, present suit was filed on 23.03.2007.

3. Upon notice, defendants had appeared and resisted the suit by filing joint written statement stating therein that the plaintiff had earlier filed a Civil Suit No. 687/02/98 titled as "Basanti Devi vs. Devinder Kumar" qua the same property against Davinder Singh/the vendor of the defendants and same was dismissed by the trial Court on 29.11.2003 and the appeal against the same was also dismissed by the Appellate Court on 04.06.2005. Thus, the decision of the said Suit has become final. The



plaintiff had filed another Suit titled as “Basanti Devi vs. Master Amar Nath” regarding the same property which was dismissed as withdrawn after filing of the written statement by the defendants. On merits, the Defendants denied factum of ownership and possession of plaintiff over the Suit property and submitted that the name of mother-in-law of Plaintiff was Gulab Devi and not Ganeshi Devi; and therefore, ownership of the plaintiff over the suit Property was not proved. Defendants further stated that they had purchased half share in house No. 98/99 from previous owner Devinder Kumar vide registered sale deed No. 1533 dated 29.12.2005 and sale deed No. 1530 dated 29.12.2005; and remaining half share vide separate registered sale deed No. 856 dated 31.07.2006 from Devinder Kumar. Thus Defendant No. 1 along with her husband i.e. Defendant No. 2 have become full fledged owners in possession of the above property vide registered sale deeds. The Defendants denied having demolished any wall of the room of the plaintiff. They also denied any knowledge about the factum of demarcation and denied that Defendants have encroached upon the property in excess of their share. All other averments of the plaint were specifically denied, and prayer for dismissal of the present Suit was made.

4. Replication was not filed.

5. From the pleadings of the parties, following issues were framed vide order dated 30.05.2007: -

“1. Whether the Plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP

2. Whether the Suit is not maintainable? OPD



3. *Whether the Plaintiff has no locus standi to file the Suit?*

OPD

4. *Whether the Plaintiff has not come to the Court with clean hands? OPD*

5. *Relief.”*

6. Upon appraisal of the pleadings and the evidence led by the parties, learned trial Court vide judgment and decree dated 28.04.2010 had dismissed the suit of the plaintiff with costs. However, the Civil Appeal filed by the plaintiff was allowed and judgment and decree of the learned trial Court was set aside in the following manner: -

“16. Under the circumstances and in view of the above discussion, I allow the present appeal and after setting aside the impugned Judgment and Decree of the Id. Lower Court, pass a Decree for possession of the area which is part of house / plot No. 97, belonging to the Plaintiff, allegedly encroached upon by the Defendants. However, the plaintiff / Appellant shall be entitled to possession of the said area, if any, after demarcation as per law. Further, the Defendants are restrained from changing the existing position of the property in dispute. No orders as to costs. Decree sheet be prepared accordingly. Trial Court record be remitted. Appeal file be consigned to records.”

Hence, present second appeal by the defendants.

7. It is *inter alia* submitted by learned counsel for the appellant/defendants that in the suit the plaintiff has sought possession due to alleged encroachment carried out by the defendants on the suit property. It is submitted that in order to maintain a suit for possession, it is first incumbent upon the plaintiff to prove her title to the suit property.



Learned counsel submits that in a previous civil suit filed by the plaintiff against the predecessor-in-interest of the defendants, there are clear and categorical findings that plaintiff had no title to the suit property. In the previous suit as well, plaintiff had laid claim to ownership of the suit property by way of Allotment Letter allegedly issued by the Rehabilitation Department Ex.P4. However, the said averment/claim of the plaintiff was found to be false by the learned trial Court vide judgment and decree dated 29.11.2003 Ex.D4. Even the Civil Appeal filed by the plaintiff against the said judgment and decree was dismissed by the learned lower appellate Court vide judgment and decree dated 04.06.2005 Ex.D5. The present suit has been instituted by the plaintiff thereafter on 23.03.2007. It is contended as it is already established on record that the plaintiff has no title to the suit property, the present suit was not maintainable.

8. Learned counsel further submits that as the plaintiff had previously also filed a suit against the defendants, the present suit was barred by principle of res judicata under Section 11 of CPC as also under Order 23 Rule 1(4) CPC. Moreover, the judgment and decree passed by the Id. First Appellate Court is liable to be reversed as the Id. First Appellate Court has passed a Decree which is vague. Id. First Appellate Court has held that the plaintiff would be entitled to possession of plot No. 97 after its demarcation. It is submitted that in doing so, the Id. First Appellate Court has abdicated its responsibility. Once the Plaintiff failed to prove that there was any encroachment, Suit of the Plaintiff was liable to



be dismissed. Id. Trial Court had dismissed the Suit. Therefore, the Judgment passed by the Id. First Appellate Court is erroneous.

9. Still further, Id. First appellate Court has erred in returning a finding that the plaintiff is owner of plot No. 97, on the basis of so-called admission of the Defendant. It is submitted that the statement of a witness is to be read as a whole. One sentence in the cross-examination could not be picked up to construe as admission of the title; especially as it was the clear case of the Defendants in the written statement that she is neither owner of plot No. 97 nor she is owner of the premises in possession of the Defendants-Appellants. Plaintiff failed to prove that she was, in any way, connected with Smt. Ganeshi. Plaintiff further failed to prove that plot No. 97 was allotted either to her or Smt. Ganeshi. Plaintiff has produced on file a slip showing that premises No. 97 was allotted to one Dogar Mal son of Sheetal Dass. It is not the case of the plaintiff that the property was allotted to Dogar Mal. Her pleaded case is that the premises was allotted to Smt. Ganeshi on 23.11.1955. She did not produce any document in support of her contention. Ex. P1, the alleged allotment has not been proved. No witness has been examined. Therefore also, the judgment and Decree passed by the Id. First Appellate Court is erroneous.

10. It is further argued that the Id. First Appellate Court has erred in ignoring that there was an earlier judgment and Decree passed by the Court below wherein Plaintiff claimed that she was owner of plot No. 97. This Suit was filed against Devinder Kumar, predecessor-in-interest of the Defendant-Appellant and was dismissed as plaintiff failed to prove her



ownership or her possession. Therefore, the present Suit is hit by principle of resjudicata. Further, Id. First Appellate Court has erred in ignoring that the plaintiff had not filed the Suit with clean hands. She had claimed that there was no earlier litigation. However, it is proved on the file that she had initially filed a Suit against Devinder Kumar which she lost. Thereafter, plaintiff also filed a Suit against the present Appellant, which was dismissed as withdrawn vide order dated 05.09.2006. The Id. First Appellate Court has further failed to note that the Suit was not maintainable in view of the bar of Order 23 Rule 1(4) CPC. The earlier Suit was withdrawn by the plaintiff, without reserving her right to file a fresh Suit. Therefore also, the Suit filed by the Plaintiff was liable to be dismissed.

11. *Per contra*, it is submitted by learned counsel for the respondent/plaintiff that first and foremost, the suit of the plaintiff is not barred by res judicata as the previous proceedings were against different parties. It is further submitted that it is incorrect for the defendants to submit that the demarcation cannot be relied upon as, the Revenue Officer of the Government had gone to demarcate the property and done the demarcation. Moreover, it was not for the defendants to question the relation of the plaintiff with Ganeshi Devi. It is contended that in the present *lis* no division of property is taking place for the pedigree table to be established. It is accordingly prayed that present Appeal be dismissed.

12. No other argument is raised on behalf of the appellant.



13. I have heard learned counsel for the parties and perused the case file and the lower Court records in minute detail. After having given my thoughtful consideration to the rival submissions made on behalf of the parties, I find merit in the submissions made on behalf of the appellants.

14. Admittedly, plaintiff had previously filed Civil Suit No. 687 dated 18.12.1998 for permanent injunction, restraining the defendant therein namely Davinder Singh, (who is the predecessor in interest of the present appellants), from interfering in the peaceful possession of the plaintiff in the house bearing Custodian no.97. In the said suit, the plaintiff had claimed to be owner in possession of the present suit property on the basis of a Letter of Allotment (Ex.P-4 in the said suit; and Ex.P-1 in the present suit) issued by the Rehabilitation Department in favour of her husband, Dogar Mal; and upon death of Dogar Mal, plaintiff claimed to be owner in possession of the suit property. In the previous suit the court had framed the following as Issues no.1 and 2: “1. *Whether plaintiff is entitled to injunction as prayed for? OPP*.”; and Issue No.2 as to “*Whether the plaintiff is owner in possession of the suit property, as alleged? OPP*”. The said suit of the plaintiff was dismissed by the trial court vide judgment and decree dated 29.11.2003 Ex.D4 (available at page 181 of the LCR). The finding of the learned trial Court on the abovesaid issues in the previous judgment dated 29.11.2003 Ex.D4 (at page 190 of the LCR) is in para 10 which reads as follows: -



“10 From the bare perusal of the case file goes to show that the plaintiff has filed the present suit that previously the residential house bearing custodian no. 97 shown in green colour in the site plan attached situated within the abadi deh of village Mustafabad, Tehsil Jagadhri, Distt. Yamuna-nagar, which was owned and possessed by Dogar Mal, who has expired and the same was allotted to him by the custodian department when he migrated to India from Pakistan at the time of partition and after the death of her husband, she alongwith her son is owner in possession of the property in dispute. Now the plaintiff is relying upon the site plan Ex.P-2/A and Ex.P-4 documents in Urdu language and Mark-A is the Hindi version but it is not attested by the counsel of the plaintiff as it is true copy of the Ex.P-4. Even otherwise, Ex.P-4 is not original document and in this document, no description of the land has been given and simply submitted that house no.97 was allotted in favour of the Dogar Mal and it is not mentioned in which year it be alleged allotment was given. This court was agree with the contentions raised by the counsel of the defendant that there is Sanad issued by the Government which is identical which is produced by the defendant in regard of the number 104 which was allotted to Prem Nath under the Rehabilitation Act, 1954. Therefore, this document is not supporting to the case of the plaintiff and it is not safe to rely upon the document Ex.P-4 as the plaintiff did not call the witness from the Rehabilitation Department to prove this document and, therefore, it is settled law that mere marking on the document is not itself proved its evidentiary value and this court came to the conclusion that Ex. P-4 cannot prove the ownership and possession of the plaintiff. The plaintiff further rely upon the report of the Local Commissioner and the site plan produced by the local



Commissioner. Here I would like to reproduce the language of the report of the Local Commissioner's as under:-

"The Wall as submitted above, was demolished near about three feet and five feet in length at point XY. The height of the said Wall is about four feet from ground level, and above this, some wall was newly constructed with fresh mud. One hole was seen in the said wall on point XY. The property of the defendant adjoins the said disputed room. The actual position of the disputed property is fully shown in the rough site plan prepared by him on the spot."

Therefore, from the report of the Local Commissioner it is not established that it is the plaintiff who are the owner in possession of the property as the plaintiff failed to produce the key of the lock and the Local Commissioner had made the measurements from the roof of the room. So far the contentions of the plaintiff that the boundaries which is given in the sale deed dated 8.11.1965 and gift deed dated 3.12.1998 is not identical has no force in the eyes of law. It is also alleged that the measurements of the room which is made by him in the site plan Ex. P2/A and the property mentioned in the gift deed, the measurements of the property is different. This contention has also no force in the eyes of law. It is settled law that the plaintiff cannot take the benefit of the drawback of the defendant's case and the plaintiff must stand on its own legs and, so far the references which is given by the plaintiffs in regard of the cross-examination of the witnesses has no value in the eyes of law and it is just corroboratory to the case of the plaintiff. The plaintiff to prove her case, rely upon the Ex. P-4 and report of the Local Commissioner Ex. P-2, which is not sufficient to prove case of the plaintiff and, therefore, the plaintiff has



failed to prove her case as it is settled law that Local Commissioner is not competent to establish the possession of any person and, therefore, it is the plaintiff who has to be prove her case and, therefore, there is no cogent evidence to prove the claim of the plaintiff. Therefore, issue no.1 and 2 is decided against the plaintiff.” (Emphasis added)

15. The appeal filed by the plaintiff against the abovesaid judgment and decree dated 29.11.2003 was dismissed by the Additional District Judge, Jagadhri vide judgment and decree dated 04.06.2005 Ex.D5 in which it was found as follows (available at page 174 of the LCR):-

“At the outset, so far as first point for determination is concerned, it is pertinent to mention that in any injunction suit, the question of title is not much importance, but the party seeking the relief must establish his/her possession over the suit property. Here, reliance can be placed upon the case in hand, appellant/plaintiff has sought relief of permanent injunction against the respondent on the ground that she is owner in possession of the suit property by virtue of allotment letter Ex.P4 which was allotted to her husband Dogar Mal by the Custodian Department. However, this fact is not established with cogent and convincing evidence, because firstly appellant has not summoned the record of the custodian Department to show as to what were the dimensions of the house no.97 allotted to Dogar Mal, husband of appellant/plaintiff. Secondly, she has failed to prove that she is not in possession of the excess area to the allotment of 1079 Sq.ft. It is admitted by her as PW-1 in her cross-examination that a site plan of the allotted house was also issued by the Custodian Department, but said site plan has not been placed on the file in order to substantiate that



suit property form the part of house no.97 allotted to Dogar Mal by Custodian Department.” (Emphasis added)

16. From a reading of the above said judgments of dismissal it is clear that in the previous round of litigation alleged ownership of the plaintiff over the suit property could not be proved. To cut short shrift, present Suit for Possession for ejectment of encroacher can be maintained only on the strength of the title of the plaintiff. However, it has already been found in the previous suit that plaintiff could not prove her ownership as, the Letter of Allotment Ex.P-4 is not original document and in this document, no description of the land has been given and it is simply submitted that house no.97 was allotted in favour of the Dogar Mal and it is not mentioned in which year it be alleged allotment was given. Clearly, therefore, once a finding of fact has already been given by a court of law in respect of the ownership of the plaintiff, the present/second suit in this regard was not maintainable.

17. It is also to be noted that in the previous suit, it was the pleaded case of the plaintiff that the present suit property was allotted in favour of her husband Dogar Mal by way Letter of Allotment (Ex.P-4 in the said suit) issued by the Rehabilitation Department. However, when plaintiff remained unsuccessful in the previous suit, she has filed the present suit with pleading to the contrary, that the very same suit property was allotted by the Rehabilitation Department in favour of her mother-in-law, Ganeshi Devi on 23.11.1955. In support, plaintiff has produced on file a slip Ex.P-1, showing that premise no. 97 was allotted to Ganeshi Devi (Ex.P1 is in Urdu and Ex.P2 is the Hindi translation which



shows that Ex.P1 is in name of Ganeshi Devi widow of Fakir Chand). Therefore, it is not the case of the plaintiff that property was allotted to Dogar Mal. Her pleaded case is that premises were allotted to Ganeshi on 23.11.1955, however, plaintiff has not produced any document in support of her said contention. As such, averments of the plaint are not supported by evidence. What is more, plaintiff has not even been able to prove her relationship with Ganeshi.

18. Even otherwise Ex.P-1 cannot be relied upon as no witness has been examined by the plaintiff to prove the said document. In fact, it is to be noted that in the previous suit, plaintiff had produced an Allotment Letter (Ex.P-4 therein) as per which suit land had been allotted to Dogar Mal. Whereas, in the present case, plaintiff has placed on record a letter of allotment Ex.P-1, as per which suit land is allotted to Ganeshi. This could well entail that the plaintiff has fabricated these documents as she has produced two contradictory letters of allotments in respect of same suit property. No registered documents were produced by the Plaintiff with regard to her alleged ownership of the suit property. In fact, Plaintiff was even unable to prove the boundaries of her ownership over the suit land. There was nothing that stopped the plaintiff from proving the boundaries of her ownership on the suit land by providing the site plan of allotment or by deposing with regard to the subject boundary. However, no such site plan was produced by the plaintiff to prove the boundaries of plot no. 97. As such, the very boundaries of the plot No. 97 of which ownership is claimed by the plaintiff have not been provided,



much less proved. Thus, even no encroachment by the appellant-defendants could be proved by the plaintiff.

19. On the other hand, the defendants have proved themselves to be owners in possession of the plots No. 98 and 99 by way of registered Sale Deed No. 856 Ex.D1, Sale Deed No.1533 Ex.D2 and Sale Deed No. 1530 Ex.D3 whereby they had purchased the adjoining plots numbers 98 and 99 from the real owner/Davinder Singh.

20. Further, much reliance has been placed by the plaintiff upon the Demarcation Report dated 20.01.2007 Ex.P3, as per which it has been reported that the defendants had encroached upon property of the plaintiff. However admittedly, the said Report has not been proved by the plaintiff in accordance with law in-as-much as the revenue official who had conducted the said demarcation, has not been examined. There is also nothing on record to indicate that the said demarcation was conducted with the knowledge of, let alone in the presence of the defendants. Even otherwise, the said Demarcation Report dated 20.01.2007 Ex.P3 (available at page 51 of the LCR) was inconclusive as it did not report that any encroachment had been carried out in plot No. 97 by the defendants. All that has been stated was that there was a locked room on the plot No. 97. This fact is not disputed by learned counsel for the plaintiff.

21. It can also not be ignored that the plaintiff had concealed about the previous litigation in the present suit. In the plaint, the plaintiff has not disclosed regarding the previous CS 687/2/1998 instituted on



18.12.1998 titled as 'Basanti Devi versus Devinder Kumar' dismissed on 29.11.2003; and the appeal dismissed on 4.6.2005. The plaintiff had also not disclosed about another Suit filed by her against the present appellant no.2 titled as "Basanti Devi vs. Master Amar Nath" regarding the same property which was dismissed as withdrawn vide order dated 5.9.2006 Ex. D6, after filing of the written statement by the defendants. The said Suit was simplicitor withdrawn without liberty to file a fresh suit on the statement of counsel for the plaintiff. Despite the above facts, in para 11 of the present plaint, plaintiff has pleaded that no suit on same cause of action regarding the suit land has ever been decided by court of law. Clearly, therefore, plaintiff has sought to mislead the courts.

22. Relevant findings of the trial Court in judgment dated 28.04.2010 are contained in paras 13, 14, 15, 16, which read as under:

"13. In order to prove her ownership, the Plaintiff has placed on record the allotment letter Ex. P1 and its Hindi translation Ex. P2. Perusal of these allotment orders would reveal that the plot No. 97 measuring 1097 Muraba feet was allotted to one Ganeshi widow of Fakir Chand. Though Plaintiff herself alleges to be the daughter-in-law of said Ganeshi Devi, however, Plaintiff has not placed any document on record to prove this fact. Further, the plaintiff has submitted that her mother-in-law Ganeshi Devi and her husband Dogarmal have died and she along with her children has become owner of the Suit property. However, there is nothing on file except the oral averments of the plaintiff and PW2 Manmohan Sharma to prove these contentions of the Plaintiff.

14. Defendants in their written statement have stated that Ganeshi Devi is not the mother-in-law of the plaintiff and



name of mother-in-law of the Plaintiff is Gulab Devi. When the defendants have categorically denied the relationship between the Plaintiff and her mother-in-law, it was incumbent upon the Plaintiff to prove the same by some cogent evidence but Plaintiff has failed to do so.

15. In order to prove factum of encroachment, Plaintiff has placed on record a demarcation report dated 20.01.2007 as Ex.P3. Perusal of the case file reveals that the said demarcation was conducted by revenue official on the orders of A C. IInd Grade prior to filing of the present Suit and the said demarcation report has been exhibited by the plaintiff in her own evidence. However, the Plaintiff has not examined the concerned revenue officer by whom the said demarcation report was conducted in order to properly prove the demarcation report. It is a settled law that mere exhibiting of a document does not amount to its proper proof and if a document has not been properly proved as per the provisions of Evidence Act, the same cannot be read into evidence even though it may have been exhibited. Therefore, even if the demarcation report dated 20.01.2007 has been exhibited, the same cannot be read into evidence for lack of proper proof. Furthermore, there is nothing on case file to suggest that the said demarcation was conducted with the knowledge or in the presence of Defendants against whom it is intended to be used by the Plaintiff.

16. Perusal of sale deed Ex. D1; Ex. D2 and Ex. D3 reveals that the Defendants have purchased the adjoining area from the vendor Devinder Kumar comprised in Plot No. 98 and 99 and adjoining area measuring 150 Sq. ft. The Plaintiff has not placed on record any site plan showing the clear area which has been encroached upon by the Defendants. It is a settled law that one who has filed a Suit has to prove its case by



producing cogent evidence and the plaintiff has to stand on his own legs. However, in the present case, the plaintiff has not only failed to prove her ownership and possession over the Suit property but has also failed to prove any encroachment over the Suit property by the Defendants. Thus, this issue is decided against the plaintiff.”

23. The judgment of the learned lower Appellate Court dated 10.04.2012 is unsustainable as no reference, let alone any discussion has been made therein regarding the previous judgments Ex.D4 and Ex.D5 whereby clear findings have been given that the plaintiff is not owner of the suit property/plot No. 97. Learned lower appellate Court also misguided itself with regard to the fact that the Demarcation Report dated 20.01.2007 (wrongly typed as 20.01.1997 in the judgment) was not proven in accordance with law.

24. In the facts and circumstances of the present case, it would be apposite to refer to a judgment of Hon’ble Supreme Court in “**Brahma Nand Puri vs. Neki Puri since dead represented by Mathra Puri and another**” 1964 SCC OnLine SC 313, the relevant portion of which reads as under:-

“8. Pausing here, we might mention that Mr Chatterji referred us to the circumstance that during the pendency of the appeal in this Court Neki Puri had died and that certain others, who, he stated, had even less claims to the Mahantship were in possession of the property and that seeing that the appellant was admittedly a Gurbhai it would be most inappropriate that his rights should be overlooked and a stranger permitted to squat on the property. We consider this submission is devoid of force. The plaintiff’s suit



being one for ejectment he has to succeed or fail on the title that he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property, assuming learned counsel is right in that submission. As pointed out in Mukherjea's Hindu Law of Religious and Charitable Trust, Second Edn., p 317:

The party who lays claim to the office of a Mohunt on the strength of any such usage must establish it affirmatively by proper legal evidence. The fact that the defendant is a trespasser would not entitle the plaintiff to succeed even though he be a disciple of the last Mohunt, unless he succeeds in proving the particular usage under which succession takes place in the particular institution. We, therefore, dismiss this aspect of the case from consideration."
(Emphasis is mine)

25. Further reference is made to another judgment passed by the Hon'ble Supreme Court in **"Sait Tarajee Khimchand and others vs. Yelamarti Satyam alias Satteyya and others"** (1972) 4 Supreme Court Cases 562, wherein it is held as under:-

"Civil Procedure Code, 1908 (5 of 1908) -Order 13 Rule 4 - Plaintiffs relying on two exhibits viz. daybook and ledger - Book not proved - No reference of books in judgment of courts below - mere marking of exhibit does not give proof of document.

XXX XXX XXX

15. The plaintiffs wanted to rely on Exs. A-12 and A-13, the day book and the ledger respectively. The plaintiffs did not prove these books. There is no reference to these books in the judgments. The mere marking of an exhibit does not dispense

with the proof of documents. It is commonplace to say that the negative cannot be proved. The proof of the plaintiffs' books of account became important because the plaintiffs' accounts were impeached and falsified by the defendants' case of larger payments than those admitted by the plaintiffs. The irresistible inference arises that the plaintiffs' books would not have supported the plaintiffs."

26. Given the above facts, the present 2nd Appeal is **allowed**.

The judgment and decree dated 10.04.2012 passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri is set aside; and judgment and decree dated 28.04.2010 passed by learned trial Court is restored in its entirety and the suit of the plaintiff/respondent is dismissed.

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

02.08.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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