

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****218****RSA-3981-2012 (O&M)****Date of decision: 19.11.2025****Rameshwar Kumar****...Appellant(s)****Vs.****Luxmi Devi and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Parminder Singh-I, Advocate for the appellant.
Mr. P.S.Dhaliwal, Advocate for the respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant No.1 against the judgment of reversal dated 31.05.2012; whereby Civil Appeal filed by the plaintiff/respondent No.1 herein has been allowed, and suit of the plaintiff has been decreed.

2. Brief facts of the case are that plaintiff/respondent No.1, had filed a civil suit for possession, declaration and permanent injunction in respect of the suit property. Defendant No.2/performa respondent No.2 herein is the son of the plaintiff who had sold the suit property to the appellant/defendant No.1 vide registered Sale Deed No. 4398 dated 09.12.2002. It was the pleaded case of the plaintiff that although appellant was in possession of the suit property on the basis of the said Sale Deed; however the Sale Deed No. 4398 dated 09.12.2002 was illegal, null and void as defendant No.2 was not owner of the suit property. It was pleaded that the suit property was owned by Kapoor Chand, who is



husband of the plaintiff and father of defendant No.2. It was contended that Kapoor Chand during his lifetime, had executed registered Will dated 26.09.1989 in favour of the plaintiff due to which plaintiff became owner in possession of the suit property. However, as the plaintiff has been residing with her son Mohan Lal/performa defendant No.3 for the last about one year, in her absence, the suit property has been fraudulently sold by her other son Madan Lal/defendant No.2 in favour of defendant No.1. It was averred that request was made by the defendants to handover the possession of suit property and for cancellation of the said Sale Deed, however, to no avail. Hence, present suit was instituted on 17.02.2003.

3. On the basis of pleadings of the parties, following issues were framed:-

- "1. Whether Kapoor Chand was the previous owner of the house in dispute?OPP*
- 2. Whether Kapoor Chand executed a registered will dated 26.09.1979 in favour of plaintiff ?OPP*
- 3. Whether the sale deed dated 09.12.2002 executed by defendant no.2 in favour of defendant no.1 is wrong, illegal, null and void and has no effect on the rights of plaintiff?OPP*
- 4. Whether plaintiff is entitled to possession of the house in dispute?OPP*
- 5. Whether plaintiff is entitled to permanent injunction, as prayed for ?OPP*
- 6. Whether Wailiti Ram was the previous owner of the house in dispute?OPD*
- 7. Whether Walaiti Ram executed a will in favour of defendant no.2 regarding house in dispute ?OPD*



8. Whether plaintiff has no locus standi and cause of action to file the present suit?OPD

9. Whether suit of the plaintiff is not maintainable in the present form?OPD

10. Whether answering defendants are bonafide purchaser for valuable consideration?OPD

11.Whether suit of the plaintiff is within period of limitation?OPP

12.Relief.”

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Sunam had dismissed the suit of the plaintiff vide judgment and decree dated 05.09.2008. However, the Civil Appeal filed by the plaintiff was allowed by the learned Additional District Judge, Sangrur vide judgment and decree dated 31.05.2012, and suit of the plaintiff was decreed as follows:-

“The suit of the plaintiff is decreed and plaintiff is entitled to possession over disputed property and the sale deed no.4398 of 9.12.2002 executed by defendant no.1 in favour of defendant no.2 is held to be illegal, null and void and Ineffective qua the rights of the plaintiff over the suit property and defendant no.1 is restrained from alienating the suit property to any other person and further restrained from raising any type of construction over the same.”

5. Hence, the present second appeal by the defendant No.1.

6. It is *inter alia* submitted by learned counsel for the appellant that learned First Appellate Court was in patent error in decreeing the suit of the plaintiff as it failed to appreciate that plaintiff had failed to lead any



evidence whatsoever to establish that suit property was owned by deceased Kapoor Chand. It is submitted that in actual fact, Kapoor Chand had a brother namely Wailaiti Ram who had died issueless. Wailaiti Ram had executed a registered Will in favour of Madan Lal, who had been residing in the suit property since then. Even the people of the village used to consider Madan Lal as owner of the suit property. Before purchasing the suit property, Appellant had made due enquiries from the villagers and had been informed that suit property was in the ownership of Madan Lal. Accordingly, appellant had bought the suit property from Madan Lal who had executed registered Sale Deed No. 4398 dated 09.12.2002 in favour of the appellant. Thus, appellant is bona fide purchaser for a valid consideration.

7. It is further submitted that the suit property falls within the Lal Lakeer. As such, no revenue record could be produced by the defendants to substantiate their claim. It is accordingly submitted that plaintiff had no locus to file the present suit. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 31.05.2012 passed by learned Additional District Judge, Sagrur be set aside; and the judgment and decree dated 05.09.2008 passed by learned Civil Judge (Junior Division), Sunam be restored and the suit of the plaintiff be ordered to be dismissed.

8. *Per contra*, learned counsel for respondent No.1/plaintiff vehemently opposes submissions made on behalf of the appellant and submits that impugned judgment and decree dated 31.05.2012 passed by



learned Additional District Judge, Sangrur suffers from no error. He accordingly prays for dismissal of the present Appeal.

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

10. Perusal of the record of the case shows that the learned first Appellate Court has held that plaintiff had proved that Kapur Chand had executed Will No. 169 dated 26.09.1989 Ex.P1 thereby bequeathing the suit property to the plaintiff. However, plaintiff has abysmally failed to prove that Kapur Chand was exclusive owner of the suit property. Admittedly, father-in-law of the plaintiff, namely Ramji Das was the owner of the suit property. Admittedly, also, Ramjidas had two sons being Kapur Chand/husband of the plaintiff; and Walaiti Ram, who had died issueless, and who had executed Will in favour of his nephew, son of plaintiff/Madan Lal/defendant no.2. In this regard, evidence of defendant No.2 as DW2 cannot be ignored; wherein he has categorically deposed that plaintiff was his mother who has been residing in Dhuri with his brother for the last 40 years. DW2 further stated that the suit property was owned by him and plaintiff had no concern with the same. He also deposed about the execution of Sale Deed Ex.D1 in favour of defendant No.1. Thus, as the plaintiff was unable to prove exclusive ownership of Kapoor Chand over the suit property, she cannot derive any benefit from the Will Ex.P1.



11. It has to be noted that Plaintiff has admitted in her cross-examination as PW1 that Walaiti Ram had got suit house from his ancestors. Thus, in view of this admission of the plaintiff, she cannot be held to be owner of the suit house. Moreover, from the cross-examination of Sidh Singh PW4, it is proved that Walaiti Ram had been residing in the suit house; and he had died in the village Jakhepal, where the suit house is located. PW4 had also admitted that appellant is residing in the house in dispute. PW4 also admitted that Walaiti Ram had executed a Will in favour of Madan Lal; which fact was also admitted by Madan Lal in his cross-examination. Even Roop Singh DW3 another respectable of the village, who had been cross-examined, had stated that Madan Lal was owner of the house in dispute. In this situation, suit of the plaintiff could not have been decreed. Thus, it was established fact on record that Plaintiff had been living in Dhuri for the last 40 years. She had not seen the house in dispute for 16 years. Madan Lal has been residing in the suit house from the very beginning. All the villagers considered Madan Lal as owner in possession.

12. The relevant findings of the Trial Court are contained in para 13 of the judgment and decree dated 05.09.2008, which read as under:-

“15. It is important to note here that neither the plaintiff nor defendant no.1 has been able to discharge the onus under the said issues. The plaintiff in her plaint has specifically pleaded that suit property was earlier the ownership of her husband Kapoor Chand but no cogent evidence regarding the exclusive ownership of Kapoor Chand has been proved on



record. Likewise, defendant no.1(DW1) has averred in the written statement that Kapoor Chand and Waliti Ram were real brothers and the suit property fell to the share of Waliti Ram but again no proof of any kind of felling the suit property to the share of Waliti Ram has been proved on record by the defendant. There is only oral evidence of plaintiff (PW1) in this regard which is not sufficient to establish the title with respect to suit property in favour of Kapoor Chand. It is important to note here that Plaintiff (PW1) during her cross-examination has deposed that Kapoor Chand got the house in dispute from his ancestors. Now, if it was ancestral property then other co-parceners should also have been entitled to the same having right in the suit property by birth but in the pleadings there is no such plea of the plaintiff (PW1). Madan Lal DW2 during his cross-examination has deposed that Kapoor Chand and Waliti Ram entered into partition with each other but nothing cogent on the record has been proved by defendant no.1(DW1) in this regard. It has been argued by the Id.counsel for the plaintiff that the suit property is situated within the Lal Lakeer so no document of title could be there in this regard. The plea raised by the Id.counsel for the plaintiff has been considered No doubt, the property is situated within Lal Lakeer but the plaintiff might have examined some other witness from the village to prove that Kapoor Chand was the exclusive owner of the suit property There are contradictory pleas of the parties as mentioned here-in-before and in the cross-examination the plaintiff (PW1) is deposing, it, as ancestral property.”

13. It may also be pointed out that it has been wrongly noted by

the First Appellate Court in para 13 of its judgment dated 31.05.2012 that

defendant No.1 has admitted in his written statement that *“the suit property was owned by Kapoor Chand and Walaiti Ram and it was further upon defendant to prove this fact that the suit property fell the exclusive share of Walaiti Ram.”* Defendant has never admitted any ownership of Kapoor Chand over the suit property. Moreover, case of the plaintiff has to stand on her own legs and cannot be decreed on the basis of any weakness in the case of defendant. Once plaintiff has failed to establish exclusive ownership of Kapoor Chand over the suit property, plaintiff could not have been held entitled to possession, declaration or injunction.

14. Lastly, it cannot be ignored that the appellant has purchased the suit property from defendant No.2 by way of a registered Sale Deed No. 4398 dated 09.12.2002 for a valuable sale consideration. Except for oral evidence of plaintiff, which is also riddled with contradictions, there is no documentary evidence to establish that suit property was owned exclusively by Kapoor Chand.

15. In view of the discussion above, the present Regular Second Appeal is **allowed**; and impugned judgment and decree dated 31.05.2012 passed by learned Additional District Judge, Sangrur is set aside; and the judgment and decree dated 05.09.2008 passed by learned Civil Judge (Junior Division), Sunam is restored. Resultantly, the suit of the plaintiff stands dismissed.

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

19.11.2025

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE