



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

RSA-2286-2013 (O&M)

Reserved on :-08.08.2025

Date of Pronouncement:-18.08.2025

Kamla Devi

... Appellant

Versus

Raghbir Singh and Another

... Respondents

-.-

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Rohan Mittal, Advocate
for the appellant (**through Video Conferencing**).

Mr. Mukesh Yadav, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. Respondent/plaintiff-Raghbir Singh filed suit for permanent injunction claiming himself to be exclusive owner in possession of the suit property on the basis of *Bahi* entry dated 28.11.2012 for a consideration of ₹30,000/- and that defendant No.1 has started living with defendant No.2, who is married at village Dhana, Tehsil Buhana, District Jhunjhunu, Rajasthan after handing over possession of suit property to plaintiff. Defendants want to encroach upon the property of the plaintiff, hence the suit.
2. Notice of the suit was served upon the defendants, who filed joint written statement denying the ownership and possession of the plaintiff



and alleged that they are exclusive owner in possession of the disputed property as they inherited the same from husband of defendant No.1 and father of defendant No.2. Respondent/plaintiff by playing fraud upon husband of appellant/defendant got executed Will of disputed property in favour of his sons and when the same came to the knowledge of defendants, the same was got set aside and cancelled vide of No.64/3 dated 30.06.2005 and it was denied that appellant/defendant No.1 is residing with defendant No.2 and prayed for dismissal of the suit.

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

1. Whether the plaintiff is owner in possession over the suit property as detailed in para No. 1 of the plaint? OPP
2. Whether the defendants has no right to evict the plaintiff from the suit property forcibly? OPD.
3. Whether the plaintiff is entitled for injunction as prayed for? OPD
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff has no cause of action to file this present suit? OPD
6. Relief

4 Respondent/plaintiff examined Prem Kumar as PW-1, Omparkash @ Omi as PW-2, Jangsher Khan as PW-3, Kishori Lal draftsman as PW-4 and plaintiff himself stepped into witness box as PW-5.

5. In order to rebut the evidence of plaintiff, appellant/defendant examined Sarjeet Singh as DW-1, Dhan Singh as DW-2, Kamla Devi defendant No.2, she herself appeared as DW-3 and Sarti Devi defendant No.1 appeared as DW-4 and evidence was closed by order.

6. After hearing arguments, the suit was dismissed. Aggrieved by the decree and judgment so passed, appeal was preferred by the



respondent/plaintiff. The First Appellate Court allowed the appeal. The judgment and decree passed by the learned Civil Judge was set aside and suit of the respondent/plaintiff was decreed. Aggrieved by the judgment so passed, present appeal has been filed.

7. Appeal was admitted for hearing. Notice was served upon the respondents, who put in appearance through Mr. Mukesh Yadav, Advocate. Lower Courts record was requisitioned and arguments were heard.

8. Appellant/defendant has assailed the judgment of the First Appellate Court on the ground that the First Appellate Court has failed to appreciate that there are material contradictions regarding execution of writing Ex.P1 and payment made by respondent/plaintiff to appellant and the contradictions in the account of witnesses of the respondent/plaintiff are material contradictions and it is not proved on record that any possession was delivered by defendant to the plaintiff in consequence of writing Ex.P1 and that protection of provisions of Section 53-A of Transfer of Property Act is not available to the respondent/plaintiff as writing Ex.P1 is not an agreement to sell, rather it is an alleged transfer deed itself, which is inadmissible in evidence

9. Whereas counsel for respondent/plaintiff argued that the finding recorded by the learned First Appellate Court are well-reasoned and based on correct appraisal of evidence and pleadings of the parties and does not call for any interference by this Court and prayed that appeal be dismissed.

10. Material question for consideration is as under:-

“Whether the findings recorded by the First Appellate Court are perverse and are against the settled law?”



10.1 Learned First Appellate Court has set aside the finding recorded by the learned Civil Judge on various issues by recording of finding that the contradictions in the account of various witnesses are minor contradictions and these are bound to occur with the passage of time and that Ex.P1 *Bahi* writing through does not confer any title in favour of respondent/plaintiff but the same can be taken into consideration for collateral purpose of ascertaining the possession and in sub-para No.2 of para No.14 of the impugned judgment, the learned First Appellate Court has recorded as under:-

“It is true as has been pointed out by the learned counsel for the respondents-defendants that every transaction of immovable property more than 100 rupees is required to be registered and is required to be affixed with sufficient stamp duty in accordance with rules but even this legal position not help the case of respondents-defendants in any manner whatsoever in the peculiar circumstances of the present case simply for two reasons i.e. firstly, because the defendants-respondents cannot be allowed to take the benefit out of their own wrong as they are stopped from challenging the validity out of the *Bahi* writing Ex.P1 after having received the full and final sale consideration of ₹30,000/- from the appellant-plaintiff in respect of their share in the disputed property, and secondly, because the plea of non-registration and non-payment of stamp duty is beyond the pleadings of the defendants-respondents as the respondents-defendants have not mentioned even a single word in this respect in the their written statement.”

11. This reasoning of the learned First Appellate Court amounts to estoppel against statue. It is accepted by learned First Appellate Court that writing Ex.P1 legally would not confer any title in favour of



respondent/plaintiff for want of registration, then by way of estoppel against statute, the appellant/defendant cannot be deprived of the valuable property. As regards protection of provisions of Section 53-A of Transfer of property Act is concerned, the same would be available only if respondent/plaintiff has succeeded in proving the possession over disputed property but considering the fact that the contradictions in the testimonies of witnesses of the plaintiff are material contradictions and the learned First Appellate Court has wrongly ignored the same on the ground that such like contradictions, discrepancies increases the truthfulness and credibility of witnesses. Learned Civil Judge has correctly appreciated the evidence on record as plaintiff is claiming possession on the basis of writing Ex.P1 and Ex.P1 has been sought to be proved by examining PW-1, PW-2, PW-3 and PW-5. Learned Civil Judge has elaborately pointed out the contradictions in para No.8 of the judgment, the same reads as under:-

According to plaintiff, Ex.P1 was mental and conscious act of defendant No. 1. In testimonies of PW1, PW2, PW3 and PW5 there are contradictions regarding execution of Ex.P1 and payment made by plaintiff to defendant No. 1. According to PW1 no payment was made in his presence at the time of execution of Ex.P1. According to PW1 writing was affected in the house of Sarti (defendant No.1). According to PW2 writing was affected in the house of Raghubir and payment was made in his presence. At that time Sarti Devi, her daughter Kamla and son of Kamla were also present there. According to testimony of this witness 300 notes of denomination of RS.100/- each were given to defendants. According to testimony of PW3 the attesting witness of Ex.P1, writing was not affected in his presence. Writing was affected in the house of Raghubir. Writing had already been prepared and thumb impression of



PW3 were taken later on over this deed on 28.11.2002. Plaintiff himself stepped into witness box as PW5 and shown his ignorance where writing was affected. He stated that currency notes of Rs. 100/- and Rs.500/- denomination. The contradiction in the testimonies of PW1, PW2, PW3 and PW5 are sufficient for shaking the version of plaintiff that so called bahi writing Ex.P1 was the mental and conscious act of defendant N. 1. Had there been sanctity and reality in the case of plaintiff there might not have been so much variation in the testimony of plaintiff and scribe as well as attesting witnesses.

This is settled position of law that plaintiff has to stand at his own legs and he cannot take benefit from weakness of case of defendants In my view, Ex.P1 is not mental and conscious act of defendant No. 1 in case it is presumed that Ex.P1 bears thumb impression of defendants. Though, same has not been proved by plaintiff for the reasons discussed above. In case, it is considered for the time being that Ex.P1 cannot be looked into as a title deed for conferring title in the hands of plaintiff qua he disputed property because Ex.P1 deals with immovable property of value of rupees more than 100/- and it must have been registered as per requirement of Indian Registration Act.”

12. The finding recorded by the learned Civil Judge is based upon the correct appraisal and appreciation of evidence on record, the contradictions in the accounts of various witnesses of respondent/plaintiff are material contradictions and goes to the root. It has also to be taken care of the fact that Smt. Kamla Devi is an illiterate lady and has close relationship with respondent-plaintiff and her thumb impressions could have been easily procured or found on some blank papers and when there are material contradictions in the testimony of witnesses of that document with regard to the execution of the document, the passing of sale consideration



and the place where the documents was executed, the respondent/plaintiff has failed to discharge the heavy onus of proving the document executed by such an illiterate person, who is closely related to respondent/plaintiff. So the finding recorded by learned Civil Judge has been wrongly interfered with by the learned First Appellate Court. The reasoning recorded by the learned First Appellate Court is not based on correct appraisal and appreciation of evidence and principles of law. The judgment and decree passed by the learned First Appellate Court is set aside and appeal filed by the appellant is allowed and judgment/decreed passed by the learned Civil Judge is restored.

13. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

18.08.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No