

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

2025:PHHC:005141



104

RSA-6134-2017 (O&M)

Date of decision: 15.01.2025

Jamu

...Appellant.

Versus

Iqramuddin and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Arjun Atri, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/ plaintiff against the concurrent findings recorded by both the Courts below vide which the suit for possession by way of mandatory injunction, was dismissed.

2. Brief facts of the case as per plaint are that plaintiff is owner of residential house, as detailed in the plaint and he purchased the suit property vide registered sale deed bearing No.1068 dated 13.10.1972 and remained in possession of the same; thereafter he was dispossessed forcibly from the suit property by the defendants; despite requests, possession of suit property was not delivered to him. Hence, the present suit was filed.

3. Upon notice, defendants appeared and filed written statement by taking preliminary objections regarding maintainability; lack of cause of

action; concealment of true and material facts, barred by Order 2 Rule 2 CPC, limitation etc. It was also alleged that plaintiff had earlier filed a suit for permanent injunction against the defendants and the same was dismissed on 15.11.2013 by learned Civil Judge (Jr. Divn.), Mewat and appeal preferred against the same was also dismissed, vide judgment dated 28.08.2014. It was also submitted that water connection, electricity bills are in the names of defendants and they are in possession of the suit house from the time of their forefathers and the municipal record is also in their names. Suit property was purchased by Wazir Chand from common funds of the predecessors of plaintiff and defendants and vide oral partition, the suit property came to the share of defendants.

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

(i) Whether the plaintiff is entitled to decree of mandatory injunction directing the defendant to vacate the suit land detailed in para No.1 of the plaint and to deliver the actual, physical possession over the suit land in favour of the plaintiff? OPP

(ii) Whether the suit of the plaintiff is hit by Order 2 Rule 2 and Rule 3 CPC? OPD

(iii) Whether the suit of the plaintiff is not maintainable or tenable in the eyes of law? OPD

(iv) Whether suit is barred by limitation and principle of resjudicata? OPD

(v) Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPD

(vi) Whether the plaintiff has concealed the true and material facts from the Court? OPD

(vii) Whether the plaintiff is estopped from filing the present

suit by his own act, conduct, admission, acquiesces and latches? OPC

(viii) Relief.

5. Thereafter, both the parties led their respective evidence. In order to prove his case, plaintiff himself stepped into witness-box as PW1 and also examined PW2-Dinesh Kumar, Clerk, Municipal Committee, Nuh and PW3-Dinesh Kumar, Record Keeper, Office of Deputy Commissioner, Gurgaon and besides that also produced on record site-plan Ex.P1.

6. To rebut the evidence of the plaintiff, defendants have examined DW1-Ikramudeen as his own witness and also tendered into evidence documents Ex.D1 to D23.

7. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 19.09.2016. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was also dismissed, vide judgment and decree dated 30.11.2016. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff, before this Court.

8. Learned counsel for the appellant/ plaintiff has contended that plaintiff is owner of the suit property and has been dispossessed by the defendants from the suit property without any right title etc. in the suit property. He has further contended that plaintiff has duly proved his case by leading cogent as well as oral evidence on record. The evidence on record has not been properly appreciated by the Courts below in the right perspective and has prayed that judgments under appeal be set aside and suit of the plaintiff/ appellant be decreed.

9. I have heard learned counsel for the appellant and have gone through the record thoroughly.

10. Plaintiff claims to be owner of the suit property and alleged to had been dispossessed by the defendants from the suit property without any right, title etc. in the suit property. Plaintiff has brought on record copy of sale deed dated 13.10.1972 (Ex.PW3/A), which is not a registered sale deed. It is a supplementary sale deed by which description of property was corrected. The original sale deed bearing vasika No.1127 dated 19.01.1972 has not been produced on record, though there is a reference regarding the same at point 'A' of the aforesaid supplementary sale deed Ex.PW3/A. The description of property as given in the supplementary sale deed bearing vasika No.1068 does not tally with the description of the property as detailed in para No.1 of the plaint, so in the absence of the original sale deed dated 19.01.1972, ownership of the plaintiff over the suit property is not proved. From documents Ex.PW2/A and Ex.PW2/B i.e. certified copies of the municipal record, the ownership of the plaintiff over the suit property is not proved as these documents cannot be relied upon as a proof of ownership and law in this respect is well settled that municipal record cannot be treated as ownership, rather the same is prepared for the purpose of assessment of taxes etc. Though, it has been claimed by the plaintiff that he was forcibly dispossessed from the suit property by the defendants without any right, title etc. in the suit property, but again it has not been pleaded and proved that at which date, time and manner, the plaintiff was allegedly dispossessed by defendants from the suit property.

11. As per Article 65 of Limitation Act, 1963, suit for possession of immovable property can be filed within 12 years from the date when the possession of the defendants became adverse to the plaintiff. As already

observed, no specific date and time of dispossession has been specified in the pleadings and no evidence regarding the same has been adduced. Plaintiff while appearing as PW1, during his cross-examination has stated that defendants are in possession of the suit property for the last 30-35 years. He has also stated that the house was constructed by father of defendants during his life time and this act was within his knowledge. Admittedly, residential house of PW1 was in front of the house of defendants. There is no such pleadings that the act of dispossession came to the notice of the plaintiff at some belated stage. As the suit for possession of immovable property can be filed within 12 years from the date of dispossession then in the absence of any specific date and time of dispossession and when plaintiff himself acknowledged in his cross-examination that defendants are in possession of the said house since 30-35 years, then the present suit has been filed beyond the period of limitation.

12. For the reasons recorded above, the present Regular Second Appeal fails and is dismissed as it does not raise any question of law much less substantial question of law.

13. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

15.01.2025

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No