



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

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RSA-90-2025 (O&M)
Date of Decision: 16.01.2025

Jaswinder Singh and others

...Appellants

V/s

Kulvir Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Onkar Rai, Advocate, for the appellants.

VIKRAM AGGARWAL, J (ORAL)

1. This is defendant's appeal against the judgment and decree dated 09.05.2024 passed by the Court of learned District Judge, Jalandhar, dismissing the appeal filed by the appellant-defendant against the judgment and decree dated 22.10.2021 passed by the Court of learned Civil Judge (Jr. Divn.), Phillaur, vide which the suit for possession filed by the respondent-plaintiff was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. A suit for possession of House No.B.II-305-A, measuring 6 *marlas* situated at Mohalla Shah Fateh Ali, Noor Mahal, Tehsil Phillaur, District Jalandhar, (hereinafter to be referred to as the "suit property") was filed by the plaintiff (Kulvir Singh). Consequent relief of permanent injunction restraining the defendants from transferring the possession of the suit property was also sought.



4. The case set out by the plaintiff was that an agreement to sell dated 14.02.2001 had been executed between the plaintiff and defendant No.1. However, since the defendants did not perform their part of the agreement, Civil Suit No.626 for specific performance was filed on 06.08.2003, which was decreed by the Court of learned Addl. Civil Judge (Sr. Divn.), Phillaur, vide judgment and decree dated 16.10.2006. No appeal was filed against the said judgment and decree. However, an execution petition was filed by the plaintiff. In the said execution petition, a Local Commissioner was appointed and sale deed qua the suit property was registered on 03.11.2008. Warrants of possession were issued and physical possession was delivered to the plaintiff with police help on 01.10.2014. However, subsequently, the defendants trespassed into the suit property. Under the circumstances, a complaint was submitted by the plaintiff and subsequently an FIR was also registered against the defendants. As the possession of the suit property had been forcibly taken over by the defendants, a suit was filed. The suit was opposed by the defendants. In the written statement, certain preliminary objections as regards maintainability, *locus standi* etc. were raised. The title of the plaintiff was denied and it was claimed that defendants were owners in exclusive possession of the suit property. The agreement to sell was stated to be a result of fraud and misrepresentation. It was also claimed that the plaintiff is a money lender having no money lending license. It was alleged that the plaintiff used to give money to borrowers and used to obtain their signatures and thumb impressions on blank papers. From the pleadings of the parties, following issues were framed.

- “1. Whether the plaintiff is entitled for possession as prayed for? OPP***
- 2. Whether suit of the plaintiff is not maintainable? OPD***



3. *Whether plaintiff is stopped by his act and conduct from filing the present suit?OPD*

4. *Relief.*”

5. Parties led their respective evidence. The trial Court decreed the suit for possession. Aggrieved by the same, an appeal was preferred by the defendants which was dismissed by the first appellate Court leading to the filing of the instant appeal.

6. I have heard learned counsel for the appellants.

7. Learned counsel for the appellants has strenuously urged that the judgments passed by the first appellate Court and the trial Court are not sustainable, for, the matter was not examined from the correct perspective. Reference has been made to the pleadings, as also documents (Annexure A-3 and A-4) and it has been submitted that the judgments and decrees are not sustainable. Learned counsel has submitted that a fraud had been played upon the appellants.

8. I have considered the submissions made by learned counsel for the appellants but find the same to be devoid of merit.

9. Admittedly, the suit for specific performance as filed by the plaintiff was decreed on 16.10.2006 (Ex.P2). It is an admitted fact that this decision was not challenged any further and the judgment and decree had attained finality. It is further an admitted fact that an execution petition was filed by the plaintiff and in the said execution proceedings, possession of the suit property was delivered to the plaintiff on 01.10.2014. However, subsequently, the defendants took forcible possession of the suit property, pursuant to which FIR No.15, dated 25.02.2017 was registered against them and the appellant-defendant No.1 is stated to have been convicted for a period of two months. Another fact which came on record was that one of the



defendants namely Nishan Singh had also filed a suit challenging the judgment and decree dated 16.10.2006 but the said suit was also dismissed. However, this fact was not disclosed in the written statement. In any case, the fact remains that the judgment and decree dated 16.10.2006 became final. Possession was delivered to the plaintiff in execution proceedings. The same was again forcibly taken over by the defendants and now the suit for possession has been decreed.

10. In the considered opinion of this Court, there is absolutely no illegality in the judgments and decrees passed by the Courts below warranting any interfering in second appeal. All issues stand settled between the parties and nothing has been brought to the notice of the Court which could have led this Court to interfere in the impugned judgments. In fact, these are now findings of facts which have been recorded by the Courts below and, therefore, no occasion arises for this Court in second appeal to interfere with the same.

11. In view thereof, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

January 16, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No