

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****113****RSA-2685-2024 (O&M)****Date of decision: 24.02.2025****Rekha Aneja****...Appellant(s)****Vs.****Buta Ram****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. S.K.Bokolia, Advocate for the appellant.

*********NIDHI GUPTA, J.**

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the respondent/plaintiff for seeking decree of declaration to the effect that plaintiff is owner of the suit property i.e. property measuring 01 marla 06 Sarsahies as per sale deed dated 15.10.1998 property No.B-14/534 (Now Property No.1018) bearing Khasra No.1586, Khewat No.1584, Khatauni No.1861, as per copy of jamabandi for the year 2007-08 situated in the revenue estate of Moga Mehla Singh-I Moga, shown red and green colour in the site plan marked ABCD, has been decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant'; and the respondent is the 'plaintiff'.



3. The brief facts of the case are that the plaintiff is owner of property shown in green and red color in the site plan, measuring 01 Marla 06 Sarsahies (MC Property No.1018, Ward No.10) situated in the area of Civil Lines Shanti Nagar Moga. Plaintiff is in possession of portion shown green in the site plan and portion shown red is in possession of defendant. It is alleged that defendant is in illegal and unauthorized possession of property shown red in the site plan and plaintiff is entitled to get possession of the same and that defendant is bent upon and threatening to alienate the suit property illegally, unjustly and by taking law into his own hands for which defendant has got no right, title or interest in doing so. Hence the present suit.

4. Upon notice, appellant/defendant appeared and filed written statement resisting the suit on various grounds. It was pleaded that copy of sale deed dated 15.10.1998 is a false document; and that defendant is in legal and authorized possession of the property shown as red in the site plan.

5. No replication was filed by the plaintiff.

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

1. Whether plaintiff is entitled to the relief of decree for declaration, as prayed for ?OPP
2. Whether plaintiff is entitled to the relief of possession of property? OPP
3. Whether plaintiff is entitled to the consequential relief of permanent injunction ?OPP
4. Whether suit is time barred ?OPD



5. Whether suit is bad for non joinder of necessary parties?

OPD

6. Relief.

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 3 in favour of the plaintiff and against the defendant; issues No. 4 to 5 were decided against the defendant as the onus to prove the said issues was upon the defendant but defendant led no evidence to prove these issues nor any arguments were advanced upon these issues; and vide judgment and decree dated 01.08.2022, the suit of the plaintiff was decreed with costs and plaintiff was declared owner of the property measuring 01 Marla 06 Sarsahies as per sale deed dated 15.10.1998 Ex.PI relating to Property No. B-14/534 (Now Property No.1018) bearing Khasra No.1586, Khewat No.1584, Khatauni No.1861, situated in the revenue estate of Moga Mehla-I Moga. He is also entitled to possession of the portion shown in red color in the site plan Ex.P5 marked A.B.C.D. as fully described in the Head Note of the plaint and possession of plaintiff is also held peaceful and lawful over his above said share. Defendant is restrained from alienating, transferring the above said property shown in red color in the site plan which is in possession of the plaintiff forcibly without due course of law. The appeal filed by the defendant against the said judgment and decree dated 01.08.2022 was dismissed by the Id. District Judge, Moga vide judgment and decree dated 16.08.2024. Hence, present second appeal.

8. Learned counsel for the appellant/defendant assails the impugned judgments and decrees of the learned Courts below by



submitting that the suit of the plaintiff was time barred as the sale deed is of the year 1998; whereas the plaintiff had filed a civil suit in the year 2018. Furthermore, the plaintiff had failed to prove the sale deed dated 15.10.1998. Therefore, he could not even prove his ownership over the property measuring 1 Marla 6 Sarsahies. It is further submitted that learned Courts below failed to appreciate that defendant had produced the correct site plan on the record. However, no issue was framed regarding this nor was the same discussed by the learned courts below while passing the impugned judgments. It is submitted that in actual fact, the said property shown in red colour in the site plan belongs to the defendant and plaintiff is neither owner of this property nor he has any right or interest in the property in question. As such, he is not entitled to the possession of the said property. The defendant has clearly stated in para 3 of the written statement on merits that the defendant is in legal and authorized possession of the property shown as red in the site plan of the property. The Id. courts below did not appreciate that the appellant examined DW-1 Sh. Sachin Kumar employee of Punjab National Bank, Branch Moga, who produced the original sale deed dated 08.12.1999 and proved it is valid and genuine. The appellant has also examined Ajay Malhotra Draftsman as DW-2, who proved the site plan Ex.D1.

9. However, the clear and cogent evidence led by the defendant had been ignored by the learned Courts below to the effect that he is owner of 1 Marla 6 Sarsahies as evident from jamabandi Ex.D1, as per which defendant is shown to be owner to the extent of 48/3078 share and



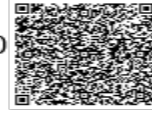
plaintiff is shown to be owner to the extent of 16/3078 share. If this is calculated, the share of the defendant would come exactly to 5 Marla 2 Sarsahies as shown in site plan Ex.D1. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees be set aside.

10. No other argument is raised on behalf of the appellant/plaintiff.

11. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

12. The whole dispute would be clarified and set at rest from the relevant findings of first Appellate Court as contained in Paras No. 19, 20 and 21 of the judgment dated 16.8.2024, which are reproduced as under:-

“19. After hearing the learned counsel for the appellant and the learned counsel for the respondent, I am of view that no doubt, the defendant/appellant was given ample opportunities to lead her evidence to prove the sale deed in his favour from 04.03.2021, till it was closed by the defendant on 12.05.2022 and during this period, more than nine consecutive opportunities were given to the defendant/appellant, but inspite of that, she had failed to prove the same. Moreover, she can be allowed to lead additional evidence only, if the real controversy between the parties can not be set a rest on the basis of the evidence already led by both the parties or brought on record. Whereas, in the present case, jamabandi Ex.P8 and Ex.D1 are there on the record to prove their ownership rights and there is no dispute about the same. The plaintiff-responent in his pleadings has claimed himself to be owner of 1 marlas 6 sarsahies on the basis of sale deed dated



15.10.1998 and defendant-appellant has not specified as to on how much area, she is in possession, but has placed on record jamabandi Ex.D1 wherein, she is shown to be owner to the extent of 48/3078 share in khasra no.1586 measuring 17 kanals 2 marlas and plaintiff/respondent is shown as owner to the extent of 16/3078 share in khasra no.1586 measuring 17 marlas 2 sarsahies and these shares have not been disputed by the parties. Even, defendant/appellant in her site plan Ex.D1 has shown her share to be 5 marlas 2 sarsahies i.e. shown in green colour. So once, shares are determined and it is not disputed, therefore, there is no need to take additional evidence and to get proved the sale deed under Order 41 rule 27 CPC. As such, application for additional evidence moved by defendant/appellant at this belated stage of appeal is dismissed.

20. Once, it is proved that plaintiff/appellant is co-owner to the extent of 1 marla 2 sarsahies and defendant/appellant is owner to the extent of 5 marlas 2 sarsahies and both the parties have produced their respective site plans on the record Ex.P5 and D1 respectively. Whereas, if the share of plaintiff/respondent shown in the site plan of the defendant-appellant is calculated, then, it will be found less by 2 sarsahies and share of porch in possession of defendant-appellant will be found in excess to the same extent and even, the Local Commissioner appointed by the Appellate Court in his report has also held that defendant/appellant is found to be in possession of 5 marlas 2 sarsahies 6 square feet on portion shown as 'ABFGD'. Whereas, plaintiff/respondent is shown in possession of 1 marla on a portion shown as 'EFCG'. Since, appellant is found even in the report of Local Commissioner to be in excess of 6 square feet share i.e. portion of porch. As such, defendant-appellant is liable to hand over the possession



of that portion and to make good the deficiency in the portion of plaintiff/respondent. So, I would say that the trial Court has rightly decided issues no.1 to 3 in favour of plaintiff/respondent and I found no illegality in the same. Therefore, the findings returned by the trial Court on issues no.1 to 3 are upheld.

21. So for as findings recorded on issues no.4 and 5 are concerned, no argument has been advanced on the same, Still, I would say that it is not a simpliciter suit for declaration filed by the plaintiff, but it is a suit for possession, which could be filed within 12 years from the date of sale deed in favour of the plaintiff dated 15.10.1998. Thus, his suit filed in the trial Court on 12.07.2018 was well within limitation.”

13. Learned counsel for the appellant/plaintiff is unable to dispute or controvert the above said facts and findings. It is clear that even as per the report of the Local Commissioner, the appellant was found to be in possession of land in excess of her share.

14. Thus, the impugned judgments and decrees of the Id. Courts below suffer from no infirmity. The present regular second appeal is hereby **dismissed.**

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

24.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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