



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

(122)

RSA No.3091 of 2024 (O&M)

Reserved on : 20.02.2025

Pronounced on :10.03.2025.

Vinod Kumar

...Appellant

Vs

Sukhchain Lal

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Sunil Chadha, Senior Advocate with
Ms. Taanvi Dhull, Advocate
for the appellant.

Mr. Hitesh Ghai, Advocate and
Mr. Sham Lal Ghai, Advocate
for the respondent.

VIKRAM AGGARWAL, J

This is defendant's second appeal against the judgment and decree dated 21.11.2024 passed by the Court of learned Additional District Judge, Ludhiana, dismissing the appeal filed against the judgment and decree dated 09.08.2016 passed by the Court of learned Civil Judge (Junior Division) Ludhiana vide which the suit for possession filed by the respondent/plaintiff (Sukhchain Lal) was decreed.

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

3. The plaintiff filed a suit for possession of shop bearing No.34-B forming part and parcel of property No.B-II 1389, Calibre Plaza, A.C. Market, Opposite Bhadaur House, Ludhiana (for short the 'suit property'). A decree of recovery of ₹9, 00,000/- along with interest @ 12% per annum on account of use and occupation charges @ ₹25000/- per month was also

sought. Further, mandatory injunction directing the defendant to erect the intervening wall between shops No.34-B and 35-B was also prayed for.

3.1. The case set up was that the plaintiff was the owner of the suit property which had been purchased by the plaintiff on account of share allocated to him by the builders which were looking after the Calibre Plaza which was constructed by its owner. A sum of ₹1,00,000/- is stated to have been paid for purchase of the said shop in July 2005. There was joint business of the family of the plaintiff of which the defendant, who was his real younger brother, was a part. On account of certain differences having cropped up, different documents regarding the parties having agreed upon certain issues were executed from time to time. It was averred that the defendant did not stick to his assurances and backed out from the same whereafter litigation started. It was averred that the wife of the defendant namely Pushpa Rani had instituted a suit against the plaintiff on the basis of an alleged oral agreement to sell as regards the suit property but the same was dismissed on 04.02.2004. Thereafter, a suit for perpetual injunction was filed by defendant restraining the plaintiff from interfering in his possession of the suit property by alleging that he had been inducted as a tenant on 30.03.2003 at a monthly rent of ₹5000/-. The suit was contested by the plaintiff and was finally dismissed on 28.10.2011.

3.2. It was averred that shops No.34-B and 35-B were adjoining to each other and with a view to make a single shop out of these two shops, the defendant had, without any authority and without obtaining the consent of the plaintiff, removed the intervening wall. It was averred that the defendant was in illegal possession of the suit property which was situated in one of the posh commercial markets as the building in which the suit property was

located was the first Air Conditioned Market of Ludhiana. It was averred that the market rent was ₹35000/- per month. Other details as regards the facilities being provided were given. Under the circumstances, the suit for possession was filed.

4. The suit was opposed by the defendant. Certain preliminary objections as regards maintainability and the suit being liable to be stayed under the provisions of Section 10 of the Code of Civil Procedure, 1908 (for short 'CPC') etc. were raised. On merits, it was admitted that the plaintiff was the owner of the suit property. However, it was denied that he had paid ₹1,00,000/- for the purchase of the same. The relationship between the parties was admitted. The execution of documents as had been averred in the plaint was denied.

4.1. It was averred that the previous suit for specific performance had been dismissed on the ground of non-payment of Court fee and not on merits. The filing of the suit for permanent injunction was also admitted but it was averred that the same had wrongly been dismissed. It was averred that appeal against the same had also been dismissed. It was averred that second appeal against the same was pending. It was further averred that the defendant was the owner of shop No.35-B and the suit property had been let out by the plaintiff to the defendant on 30.03.2003 at a monthly rent of ₹5000/-. As regards the intervening wall, it was averred that the same had been removed with the consent of the plaintiff. Other averments were denied.

5. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for possession as prayed for?OPP
2. Whether the plaintiff is entitled for recovery of amount alongwith interest as prayed for? OPP
3. Whether the plaintiff is entitled for mandatory injunction as prayed for?OPP
4. Whether the suit is not maintainable? OPD
5. Whether the suit is liable to be stayed under Section 10 of CPC?OPD
6. Relief.

7. Parties led their respective evidence. The trial Court decreed the suit for possession vide judgment and decree dated 21.11.202 and the appeal filed against the judgment and decree dated 09.08.2016 passed by the Court of learned Civil Judge (Junior Division) Ludhiana was also dismissed, leading to the filing of the present Regular Second Appeal.

8. Learned counsel for the parties were heard.

9. Sh. Sunil Chadha, learned Senior counsel representing the defendant submitted that both the Courts had erred in decreeing the suit filed by the plaintiff despite the plaintiff not having led any evidence to prove that he was the owner of the suit property. Learned Senior counsel submitted that merely based upon the admission of the defendant in the written statement as regards ownership of the plaintiff over the suit property, the Courts could not have accepted the version put-forth by the plaintiff and the plaintiff was required to lead cogent evidence to prove his case and claim. Learned Senior counsel submitted that the Courts came to an unacceptable finding that even if the son of the plaintiff was the owner of the property, which the plaintiff had so admitted while appearing as a witness, it did not

make a difference, for, there was no dispute between the plaintiff and his son. Learned Senior counsel submitted that such a finding is not sustainable.

9.1. Learned Senior counsel made pointed reference to Section 58 of the Indian Evidence Act and submitted that in terms of the same, it was for the plaintiff to prove his ownership of the suit property which he failed to do.

9.2. Referring to the plaint, learned Senior counsel submitted that the averments made in paragraphs 1 and 2 as regards the suit property having been purchased by the plaintiff for a sum of ₹1,00,000/- and on account of differences having cropped up amongst brothers, various documents referred to in paragraph 2 having been executed from time to time were not proved. Learned Senior counsel submitted that no evidence was led to prove the averments made in the said paragraphs. In fact referring to documents Ex.P5 and P-6, learned Senior submitted that the suit property had fallen to the share to the defendant and Balbir Monga which is also a pointer towards the fact that the plaintiff was not the owner of the suit property.

9.3. Learned Senior counsel referred to the litigation that ensued between both sides and submitted that the case set up in the present suit was required to be proved by leading independent and cogent evidence which was not done and, under the circumstances, the suit deserved to be dismissed. In support of his contentions, learned Senior counsel placed reliance upon the judgments of Supreme Court of India in ***Jagdish Prasad Patel (Dead) Thr. Lrs and another Vs. Shivnath and others 2019(5) RCR(Civil) 373, The Gujarat Maritime Board Vs. G.C. Pandya 2015(3) RCR(Civil) 94, Chandan (dead) thr. His LRs Vs. Lakhi Ram 2007(3) RCR***

(Civil) 562, Smt. Sumitra Bai Vs. P. Siddesh and Nagaraju and another 2013(53) RCR(Civil) 328 and Vaddari Jhatipat Ramloo Vs. T. Sri Hari and others 2014(25) RCR(Civil) 243.

10. *Per contra*, Sh. Hitesh Ghai, learned counsel representing the plaintiff submitted that there is no illegality or infirmity in the findings recorded by both the Courts and that the suit had rightly been decreed. Learned counsel referred to the litigation that had ensued between the parties and submitted that the defendant have taken different stands in different litigations as regards the suit property. However, the common fact in all litigations was that the defendant had admitted the ownership of the plaintiff over the suit property. Learned counsel submitted that the defendant and his wife had initiated different suits. In one, it was claimed that the defendant was a tenant in the suit property whereas in another suit, it was claimed that the plaintiff had executed an agreement to sell in favour of the wife of the defendant. Learned counsel submitted that the defendant had therefore taken different stands in different litigation showing his ill-intention.

10.1. Learned counsel referred to the oral and documentary evidence led by the plaintiff including the documents Ex.P-5 and P-6, reference to which had been made by learned Senior counsel and submitted that even documents Ex.P5 and P-6 do not state that Balbir Monga was the sole owner of the suit property. Learned counsel submitted that it is quite strange that the defendant had denied the execution of these documents in each and every litigation including the present litigation but at the same time have placed reliance upon the contents of documents Ex.P-5 and P-6 during the course of arguments.

10.2. Learned counsel submitted that in various suits filed by the parties against each other, the ownership of the plaintiff over the suit property had categorically been admitted by the defendant and, therefore, under the circumstances, it would not be open for the defendant to now raise the issue of ownership. Learned counsel submitted that in any case document Ex.P-2 had duly been produced on record to prove that a sum of Rs.1,00,000/- had been deducted from the account of the plaintiff towards payment of the suit property. Learned counsel submitted that at best, there was a delay in execution of sale deed in favour of the plaintiff which should not have bothered the defendant.

10.3. As regards the Regular Second Appeal pending in this Court, learned counsel submitted that there is no stay in the said Regular Second Appeal and in fact notice of motion was issued only with a view to explore the possibility of an amicable settlement.

10.4. Learned counsel also referred to the provisions of Section 58 of the Evidence Act, Order 8 Rule 5 CPC and Section 115 of the Evidence Act. As regards Section 58 of the Evidence Act, it was submitted that in view of the admission in the written statement, there was no requirement for the plaintiff to prove his ownership over the suit property.

10.5. As regards the provisions of Order 8 Rule 5, it was submitted that there should have been a specific denial of ownership of the plaintiff in the written statement and in fact as regards all facts averred in the plaint and that in case of a specific denial not being there, the facts averred in the plaint would be taken to be admitted. Referring to the provisions of Section 115 of the Evidence Act, learned counsel submitted that once the defendant had admitted the ownership of the plaintiff over the suit property, he would be

estopped from the disputing the same now. In support of his contentions, learned counsel placed reliance upon the judgments of this Court in *Mehar Singh and another Vs. Faqir Chand and others 1996(2) RRR 388 and Dilbagh Singh Vs. Gurbax Singh (deceased) thr. LRs 2018*4) RCR (Civil) 250*.

11. I have considered the submissions made by learned counsel for the parties and have perused the record.

12. Having examined the matter, this Court is of the considered opinion that the defendant has not come out clean and has taken contradictory stands in various cases initiated by the parties against each other. Admittedly, the plaintiff and defendant are real brothers. The defendant himself initiated a suit for permanent injunction against the plaintiff in 2003 claiming himself to be a tenant. He was seeking an injunction against the plaintiff herein that he should not interfere in the possession of the defendant herein over the suit property since he had been inducted as a tenant. The said suit was dismissed by the trial Court on 28.10.2011. The appeal was also dismissed on 08.07.2014 and RSA No.4901 of 2014 is now pending before this Court. However, as has been admitted by both sides, there is no stay.

13. Then there was another suit filed by the wife of the defendant namely Pushpa Rani against the plaintiff for possession of the suit property by way of specific performance of an agreement to sell alleged to have been executed by the plaintiff in favour of Pushpa Rani. This suit was also dismissed on 13.01.2017 by the trial Court and appeal was also dismissed on 04.12.2018 and RSA No.4493 of 2019 is pending. Then there are certain cases initiated by the plaintiff including the present case and two suits for

recovery. These facts have been admitted by both sides and judgment and decrees already passed were duly produced on record.

14. The manner in which the defendant has changed his stand in different litigations is shocking. He has initiated one case after the other and has kept his brother entangled in litigation. In the written statement filed in the present case, there was a clear cut admission as regards the ownership of the suit property wherein the defendant admitted that the plaintiff was the owner of the suit property. In the suit for permanent injunction filed by the defendant, it was his categoric stand that the plaintiff was the owner of the suit property. Same was the case with regard to the suit for possession filed by the wife of the defendant Pushpa Rani. Once the defendant himself had admitted the plaintiff to be the owner of the suit property multiple times, it did not lie in his mouth to even contend that the plaintiff was not the owner of the suit property. Section 58 of the Indian Evidence Act states as under:-

“58. Facts admitted need not be proved.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

A perusal of the aforesaid provision shows that in view of the categoric admission made by the defendant in the written statement as also in the other litigations, there would be no requirement of the plaintiff proving his ownership as regards the suit property. Further, this Court does not find any reason to call upon the plaintiff to prove the same. In this view

of mine I draw support from a judgment of the Supreme Court of India in the case *Nagiadas Ramdas Vs. Dalpatiam Ichharam, Brijram and others, 1974 AIR(Supreme Court) 471*, wherein it was held that admissions, if true and clear, are by far the best proof of the facts admitted. It was held that admissions in pleadings or judicial admissions, admissible under Section 58 of the Indian Evidence Act stand on a higher footing than evidentiary admissions and that they are binding on the party that makes them and constitute a waiver of proof. It was held that such admissions, by themselves, can be made the foundation of the rights of the parties. Further, in terms of the proviso to Order 8 Rule 5 CPC, the Courts did not rightly call upon the plaintiff to lead any further evidence to prove his ownership.

15. Be that as it may, the plaintiff did produce a copy as of the ledger Ex.P2 and also stepped into the witness box and deposed about his ownership over the suit property. In fact, even while appearing as DW-1, the defendant did not deny the ownership of the plaintiff and kept on harping about his own stand with a view to protect his possession. The trial Court rightly held that once the defendant had not even pleaded that the plaintiff was not the owner of the suit property he would not be permitted to rely upon any evidence with regard to the same. The trial Court, in fact, dealt with the matter in an extremely effective manner and return findings in accordance with law on all issues.

16. As regards the status of possession of the defendant, he did not produce any document to show as to how he had come into possession. From the other litigation that ensued and was initiated by the defendant and his wife, it is clear that the defendant had been changing his stand. He was not able to prove that he is a tenant in the suit property nor was he able to

prove that an agreement to sell had been executed in favour of his wife. Under the circumstances, it was rightly held by both the Courts that the defendant was in illegal possession of the suit property without payment of anything. I do not find any infirmity in the findings of fact recorded by both the Courts warranting interference in second appeal.

17. Though no other argument has been addressed, I do not find any illegality in the finding as regards assessment of *mesne* profits and the mandatory injunction issued by the Courts directing the defendant to construct the intervening wall between the suit property and Shop No.35-B.

18. I have perused the judgments, reliance upon which was placed by learned Senior counsel representing the appellant-defendant. In the case ***Jagdish Prasad Patel (Dead) Thr, LRs Vs. Shivnath and others*** (supra), Apex Court held that where a plaintiff had filed a suit for declaration of title, few sentences in the written statement could not be isolated and taken advantage of. It was held that a written statement was to be required to be gone into in toto. There is no quarrel with the said proposition. However, the defendant would not gain from the said judgment, for, the facts of the instant case are entirely different. Firstly, it was merely a suit for possession wherein no issue of title was framed. Be that as it may, the categorical admission made by the defendant in the written statement filed in the present case as also the stand taken in other cases that it was the defendant who was the owner of the suit property does not leave room for any other view to be taken. Taking any other view would amount to giving premium to a person who has frequently been changing his stand.

19. In the case ***The Gujarat Maritime Board Vs. G.C. Pandya*** (supra), the Supreme Court of India held that even if there was an admission

of a fact by the defendant, the Court may still require the plaintiff to prove the said fact. There is again no quarrel with the ratio laid down in the said judgment. In fact, this ratio applies well to the present case and keeping in view the categoric admissions in various litigations, this Court does not feel the necessity to require the plaintiff to prove that he was the owner of the suit property. In case of ***Chandan (dead) thr. his LRs Vs. Lakhi Ram*** (supra) a Co-ordinate Bench of this Court took the view that in a suit for possession, in the absence of a valid title, a suit for possession could not have been filed. The same reasoning, as has been given while discussing the previous judgment would apply to the present case as well. The judgments in case of ***Smt. Sumitra Bai Vs. P. Siddesh and Nagaraju and another*** (supra) and ***Vaddari Jhatipat Ramloo Vs. T. Sri Hari and others*** (supra) also laid down similar law as has been laid down in the other judgments relied upon by learned Senior counsel, which even otherwise, is settled law. These judgments would also, therefore, not come to the aid of the appellant. In case of ***Mehar Singh and another Vs. Faqir Chand and others*** (supra), a Coordinate Bench of this Court was dealing with a second appeal filed by the plaintiff. In that case also the parties to the *lis* were real brothers. The dispute therein was as regards some alleged family settlement. The Coordinate Bench referred to a previous litigation between the parties . It was held that any admission made in the previous suit was binding upon the parties and, therefore, the burden to lead the best evidence to prove the said fact stood discharge. In the present case, apart from the admission made in the written statement filed in the present case, there were admissions in plaints filed by the defendant and his wife respectively as regards the ownership of the plaintiff over the suit property. Under the circumstances,

the burden to prove the ownership of the suit property, despite there being no issue to this effect, stood discharged meaning thereby that even if best evidence was not produced to prove the said fact, the plaintiff could not be non-suited.

20. The cumulative result of the aforesaid discussion is that no illegality was committed by the Courts in decreeing the suit filed by the plaintiff. Accordingly, I find no reason to interfere in the findings recorded by both the Courts.

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

(VIKRAM AGGARWAL)
JUDGE

Pronounced:10.03.2025
Rekha

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