



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

RSA No.3908 of 2012 (O&M)

Reserved on : 07.03.2026.

Pronounced on : 27.05.2026.

Uploaded on: 29.05.2026.

Bhule Singh Pradhan

...Appellant

Versus

Smt. Parbha Mishra

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Japjit Singh Johal, Advocate &
Ms. Nancy Antwal, Advocate
for the appellant.

Mr. Jagdish Manchanda, Senior Advocate with
Mr. Nischal Manchanda, Advocate &
Mr. Vipul Thakur, Advocate
for the respondent.

VIKRAM AGGARWAL, J

This is defendant's second appeal against the judgment and decree dated 27.07.2012, passed by the Court of Additional District Judge, Faridabad, dismissing the appeal filed against the judgment and decree dated 18.05.2011 passed by the Court of Civil Judge (Junior Division), Faridabad, vide which the suit for mandatory injunction was decreed.

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

3. The plaintiff (Smt. Parbha Mishra) instituted a suit for mandatory injunction. It was claimed that she was the owner of House No.295, Sector 15-A, Faridabad (hereinafter to as 'the suit property') measuring 160 square yards. She claimed to have purchased the same from

one Smt. Navedita Bhatia vide registered sale deed dated 25.08.2005, who delivered its actual physical possession to the plaintiff. However, on account of some religious commitments and formalities, the plaintiff had not shifted therein.

3.1 It was claimed that Smt. Navedita Bhatia had purchased the suit property from one Smt. Kamlesh Dawar, Vishal Dawar and Vivek Dawar, vide registered sale deed dated 07.05.2005. On the basis of the said sale deed, the suit property had been transferred in favour of Smt. Navedita Bhatia, vide permission letter dated 05.10.2005. It was claimed that the said Smt. Kamlesh Dawar etc., had delivered actual physical possession of the suit property to Smt. Navedita Bhatia.

3.2 It was claimed that the plaintiff had purchased the suit property after making due inquiries about the title of the vendor.

3.3 It was averred that the defendant, who was a desperate person and a union leader, exercising good influence over the local administration and police, forcibly trespassed into the suit property on 20.10.2006 after obtaining an order of *status quo* with regard to the suit property.

3.4 It was averred that the defendant had already instituted a suit against Smt. Kamlesh Dawar etc. and the plaintiff had also been impleaded in the same. The application under Order 39 Rule 1 & 2 for the grant of injunction was dismissed. Against the said decision, an appeal was preferred by the defendant, in which an order of *status quo* was passed on 19.10.2006. In the garb of the said order, the defendant forcibly trespassed into the suit property. It was claimed that the matter had been reported to the police, but no action was taken on the ground that civil litigation was pending.

3.5. It was averred that the plaintiff had requested the defendant to remove his illegal and unauthorized possession from the suit property, but it was claimed by the defendant that he had entered into an oral agreement to sell with one Sh. J.N. Dawar, husband of Smt. Kamlesh Dawar. Under the circumstances, the suit was instituted.

4. The suit was opposed by the defendant. In the written statement, certain preliminary objections as regards maintainability, *locus standi*, cause of action, the suit being barred by the principle of *res judicata* as a similar case titled as '***Bhule Singh Pradhan Vs. Smt. Kamlesh Dawar and others***', was pending between the parties in the Court of Civil Judge, Faridabad and the said suit having been filed with an ulterior motive, were raised. It was averred that the defendant had been in actual, physical, continuous and uninterrupted possession of the suit property as a tenant under Smt. Kamlesh Dawar since October 1988. The rent was initially Rs.1300/- per month, which was enhanced to Rs.1500/- per month. It was claimed that a lease deed had also been executed between the husband of Smt. Kamlesh Dawar and the defendant. It was averred that on account of the long continuous tenancy of the defendant, Sh. J.N. Dawar had entered into an oral agreement to sell on 07.03.1999 and had agreed to sell the suit property to the defendant for a total sale consideration of Rs. 8,00,000/- out of which, a sum of Rs.50,000/- had been paid by way of bank draft No. 0122296. The basic stand, therefore, was that the defendant was a tenant in possession of the suit property. On merits also, a similar stand was taken.

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

- 1. Whether the plaintiff is owner of suit property mentioned in para no.1 of the plaint after purchasing it by registered sale deed dated 25.08.2005? OPP**
- 2. Whether the plaintiff is entitled to get the relief of mandatory injunction as prayed for? OPP**
- 3. Whether the suit is not maintainable in the present form? OPD**
- 4. Whether the suit is barred by principal of resjudicata? OPD**
- 5. Relief.”**

6. The plaintiff led its evidence, whereas no oral or documentary evidence was led by the defendant.

7. The trial Court decreed the suit vide judgment and decree dated 18.05.2011. The appeal filed by the defendant against the said judgment and decree was dismissed by the first Appellate Court vide judgment and decree dated 27.07.2012, though with a modification directing the plaintiff to affixed *ad-valorem* Court fee leading to the filing of the present appeal.

8. Learned counsel for the parties were heard.

9. It was strenuously urged by learned Senior counsel representing the appellant-defendant that the impugned decisions are not sustainable. It was submitted that the plaintiff had not been able to prove that the defendant had forcibly acquired possession of the suit property. It was argued that it is quite strange that despite allegations of the defendant having forcibly come into possession of the suit property, the matter was not reported to the police. It was argued that it is not believable that the owner of the suit property would not report forcible occupation of the same to the police.

9.1. It was argued that the specific stand of the defendant was that he had been a tenant in the suit property under Smt. Kamlesh Dawar since

1988. It was argued that the appellant had not been able to disprove the said stand.

9.2. Reference was made to the proceedings in the suit which was ultimately dismissed and an appeal had been preferred. It was argued that in the appeal as well, the plaintiff herein had given a statement that the defendant would not be evicted, except in due course of law. It was submitted that the said statement was made only because the defendant was in possession of the suit property as a tenant.

9.3. Reference was made to the application (Annexure P-1) moved by the plaintiff before the Appellate Court as regards the arrears of rent. Reference was also made to the reply (Annexure P-2) submitted to the said application. It was argued that the moving of this very application clearly shows that the plaintiff had also admitted, though inadvertently, that the defendant was a tenant in the suit property. Learned counsel submitted that under the circumstances, the story of the defendant having come into forcible possession of the suit property was demolished.

9.4. Learned counsel referred to the cross-examination of PW1-Smt. Parbha PW2-Shri Hari Shankar Mishra and PW3-Shiv Bahadur, wherein the said witnesses gave evasive answers to the questions that the defendant had been a tenant in the suit property under Smt. Kamlesh Dawar.

9.5. It was argued that the averments made in the suit itself shows that the appellant was in possession.

9.6. It was argued that though the defendant did not lead any evidence, it was for the plaintiff to prove her own case and no advantage could be taken by the plaintiff from any weakness in the case of the defendant.

9.7. It was argued that a mere recital in the sale deed that possession had been delivered would be of no relevance and it has repeatedly been held that such recitals are common and are not a proof of possession having been delivered.

9.8. It was argued that the plaintiff deliberately filed a suit for mandatory injunction whereas a suit for possession should have been filed. It was also submitted that the First Appellate Court gave an erroneous findings as regards the court fee and it was for the Appellate Court to have assessed the value of the suit property for the purpose of Court fee.

10. It was argued that the impugned judgments and decrees are not sustainable and, therefore, deserve to be set aside. In support of his contentions, learned Senior counsel placed reliance upon the judgments of the Hon'ble Supreme Court of India in ***Ram Pat and others Vs. State of Haryana, 2009(7) SCC 614***, the judgment of a Division Bench of this Court in ***Darshan Singh Vs. The Hindustan Cold Stores and Refrigeration (Private) Ltd., 1969 PLR 566*** and judgments of Coordinate Benches of this Court in ***Swaran Singh and others Vs. Daljit Kaur (RSA No.2469 of 2017, decided on 28.02.2018)*** and ***Food Corporation of India and another Vs. M/s Joginder Singh Varinder Kumar (RSA of 3708 of 2014, decided on 25.01.2023)***

11. *Per contra*, it was submitted by learned Senior counsel for the respondent-plaintiff that there is no illegality in the impugned decisions. It was argued that the defendant did not step into the witness box nor was any other oral or documentary evidence produced as a result of which, adverse inference deserves to be drawn against the defendant.

11.1. Learned Senior counsel referred to the judgments of both Courts in detail and submitted that the same were passed in accordance with law and no interference is therefore called for. In support of his contentions, learned Senior counsel placed reliance upon the judgments of the Hon'ble Supreme Court of India in ***Iswar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera and another, 1999(3) SCC 457*** and ***Vidhyadhar Vs. Mankikrao and another, 1999(3) SCC 573***.

12. I have considered the submissions made by learned counsel for the parties.

13. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the cases of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed.

14. Reverting to the case in hand, as has rightly been held by both Courts, the plaintiff was duly able to prove her ownership and possession over the suit property. It was proved that she had purchased the suit property from one Navedita Bhatia vide registered sale deed dated 25.08.2005 (Ex.P-1). It was also proved that Navedita Bhatia had purchased the suit property from Kamlesh Dawar and others vide registered sale deed dated 07.05.2005

and pursuant to the same, the suit property had been transferred by the Haryana Urban Development Authority in favour of Navedita Bhatia vide communication dated 05.10.2005 (Ex.P-2). The sale deed (Ex.P-1) duly had a recital as regards delivery of possession. The stand of the defendant that the said recital was false and that actually the defendant was in possession of the suit property when it was purchased by the plaintiff, was proved to be a false plea.

15. Certain dates would be essential to be noticed. As mentioned above, the suit property was purchased by the plaintiff vide registered sale deed dated 25.08.2005. Though the stand of the defendant was that the suit for permanent injunction had been instituted by the defendant much prior to the execution of the said sale deed, the same is factually incorrect since the suit was instituted on 29.09.2005 i.e. after the execution of sale deed in favour of the plaintiff. The defendant set up a stand of being a tenant in the suit property since 1988 and also raised a plea of an oral agreement to sell having been executed in his favour. However, the application under Order 39 Rule 1 & 2 CPC was dismissed by the trial Court vide order dated 13.10.2006 clearly holding that the defendant (plaintiff therein) had not been able to prove that he was a tenant in the suit property. He preferred an appeal against the said decision in which an order of *status quo* was passed. During the pendency of the appeal, a statement was given by the plaintiff of the present case, who had been impleaded as a party in the said case, on an application having been moved by her under Order 1 Rule 10 CPC, on 12.12.2008 that the defendant (plaintiff therein) would not be evicted except in due course of law. Accordingly, the matter was disposed of by the Lok

Adalat on 12.12.2008 by noticing that a suit for possession had been filed by Smt. Parbha Mishra against Bhule Singh.

16. It, therefore, stands clearly established that the plaintiff had never been able to prove that he was in possession of the suit property as a tenant. In fact, the categoric stand of the plaintiff is that the defendant took forcible possession of the suit property on 24.10.2006 and despite the matter having been reported to the police, no action was taken on the ground that civil litigation was pending.

17. The defendant has not bothered to contest the present suit. No evidence, oral or documentary was led to prove his stand. No doubt, it was for the plaintiff to prove her own case by leading cogent evidence and a plaintiff cannot be permitted to take advantage of the weakness, if any, in the case of the defendant. However, the plaintiff did prove her case that she had become owner in possession of the suit property and that the defendant had forcibly occupied the same. The defendant, on the contrary, did not dare to step into the witness box nor did he produce any oral or documentary evidence in support of his case. His stand as regards the oral agreement to sell and that he was a tenant remained unproved. This Court, therefore, draws an adverse inference against the defendant. In taking this view, this Court draws support from the judgment of the Hon'ble Apex Court in the case of '***Ishwar Bhai C. Patel @ Bachu Bhai Patel Vs Harihar Behera and another***' (supra), wherein, in a suit for recovery of money, upon the defendant not entering into the witness box, an adverse inference was drawn as per Section 114 (g) of the Indian Evidence Act and it was held by the Hon'ble Apex Court as under:-

“29. Applying the principles stated above to the instant case, it would be found that in the instant case also the appellant had abstained from the witness box and had not made any statement on oath in support of his pleading set out in the written statement. An adverse inference has, therefore, to be drawn against him. Since it was specifically stated by respondent No.2 in his statement on oath that it was at the instance of the appellant that he had issued the cheque on the account of respondent No.1 in the Central Bank of India Ltd., Sambalpur Branch, and the appellant, admittedly, had encashed that cheque, an inference has to be drawn against the appellant that what he stated in the written statement was not correct. In these circumstances, the High Court was fully justified in decreeing the suit of respondent No.1 in its entirety and passing a decree against the appellant also.

30. For the reasons stated above, we find no merit in this appeal which is dismissed with costs.

Appeal dismissed”

18. Reference in this judgment was also made to the judgment of a Division Bench of this Court in the case of ***Bhagwan Dass Vs. Bhishan Chand, AIR 1974 Punjab and Haryana 7***, wherein, an adverse inference was drawn against a party which had not entered into the witness box. Reference was also made to judgments of various other High Courts on the same issue.

19. A similar view was taken by the Hon’ble Apex Court in the case of ***‘Vidhyadhar Vs. Mankikrao and another’ (supra)***. The relevant part of the said judgment is reproduced as under:-

“17. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsha Singh v. Gurdial Singh*, AIR 1927 Privy Council 230. This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh*, AIR 1930 Lahore 1 and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh* AIR 1931 Bombay 97. The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat*, AIR 1970 Madhya Pradesh 225, also followed the Privy Council decision in *Sardar Gurbakhsh Singh's case (supra)*. The Allahabad High Court in *Arjun Singh v. Virender Nath*, AIR 1971 Allahabad 29 held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in *Bhagwan Dass v. Bhishan Chand*, AIR 1974 Punjab and Haryana 7, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.”

20. A Co-ordinate Bench of this Court also took the same view in the case of *Singh Ram (Deceased) Vs. Gian* 1997 (2) RCR (Civil) 125. This Court is in agreement with the said view taken by the Co-ordinate Bench.

21. As regards the moving of an application for the payment of the arrears of rent before the Appellate Authority, the same does raise an eyebrow. However, this alone would not be sufficient to prove the stand of the defendant. No further action seems to have been taken on the application

and it was submitted during the course of arguments that the rent was eventually not paid and not accepted. Even otherwise, it does not appeal to common sense that in a suit for possession, somebody would move an application for payment of arrears of rent after taking a stand that the defendant had come into forcible possession of the suit property in October, 2006.

22. The argument that evasive answers were given in the cross-examination by PW1-Smt. Parbha Mishra, PW2-Sh. Hari Shankar Mishra and PW3-Sh. Shiv Bahadur, as regards the factum of the defendant being a tenant in the suit property, is also devoid of merit. It is reiterated that the defendant did not lead any evidence to prove his stand. Even if the witnesses expressed ignorance about the defendant being a tenant, it cannot be taken to be an admission. They simply stated that they did not know as to whether the defendant had been a tenant. Statements of witness have to be examined in their entirety and one line here or there, cannot be read in isolation. The consistent stand of the witnesses was that the plaintiff was the owner in possession of the suit property and the defendant had acquired forcible possession of the same. The argument is, therefore, devoid of merit and is accordingly rejected.

23. The last argument that no Court fee was assessed by the first Appellate Court has some merit. The first Appellate Court held that *ad-valorem* Court fee was required to be affixed on the plaint and that the needful be done within one month, without assessing the market value. It was the case of the plaintiff that the suit property had been purchased vide registered sale deed dated 25.08.2005 (Ex.P-1). The market value would,

therefore, be taken to be the value of the property mentioned in the said sale deed. Accordingly, the plaintiff would require to affix *ad-valorem* Court fee on the plaint by treating the value of the suit property mentioned in the sale deed as the market value and the defendant would require to accordingly pay the *ad-valorem* Court fee on the first and second appeals. There would be no requirement for remitting the matter to the first Appellate Court for the said purpose, once the market value is available in the sale deed. The needful be done within six weeks.

24. I have gone through the judgments relied upon by learned Senior Counsel representing the appellant. The judgments on judicial admissions are not applicable since there was no admission by the witnesses of the plaintiff as regards the possession of the defendant over the suit property.

25. The judgment in the case of *Nimbo Vs. Satyabir Singh, 1995 (1) PLR 546 (RSA No.1048 of 1991, decided on 09.09.1994)*, that material evidence had been ignored by the Courts and, therefore, the Regular Second Appeal was maintainable is also not applicable because no material evidence was ignored by both Courts. The judgments on the point of framing of issues after due application of mind would also not affect the decision in the appeal because as regards the issue of Court fee, the requisite findings have been given by this Court. Though no specific issue of Court fee was framed, other common issues were framed as regards maintainability etc., which would cover the issue of Court fee as well. Under the circumstances, though, completely agreeing with the ratio laid down in the said judgments, the same would not come to the aid of the appellant.

26. For the reasons aforementioned, the instant appeal is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on 27.05.2026
Rekha/Mani Kumar

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