

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****228****RSA-3320-2016 (O&M)****Date of decision: 28.04.2026****Vinod Kumar Chauhan****...Appellant(s)****Vs.****Gurdip Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Saurabh Arora, Advocate
for the appellant.

Mr. Sandeep Dhiman, Advocate
for the respondent.

NIDHI GUPTA, J.

The plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby suit filed by the appellant for possession and permanent injunction, has been dismissed by both the District Courts.

2. Brief facts of the case are that the plaintiff had filed the present suit for passing a decree of possession of suit land measuring 40'x 5 1/2", as described in the plaint; and consequential relief of permanent injunction to restrain the defendant from opening door, window, ventilator and raising any kind of construction over the suit property.

3. It was the pleaded case of appellant that one Shri Rulla was owner of land measuring 40' x 11' fully as described in the plaint. Upon his death, the said land had been inherited by his two sons, namely, Naranjan



Singh and Joginder Singh in equal shares. Naranjan Singh had gifted his share in favour of his sons through registered Gift Deed dated 16.9.1975. Thereafter, Sh. Joginder Singh who was owner of 1/2 share in the above property, had sold his share in favour of Sh. Mehar Singh @ Mehar Chand, through registered Sale Deed dated 9.9.1983. Thereafter, Nirmal Singh son of Sh. Naranjan Singh had executed Sale Deed dated 10.05.2005 in respect of two rooms, one hall, kitchen and toilet measuring 47' x 12' in favour of the plaintiff. The said property was adjoining on the north side with the house of defendant Gurdip Singh. However, Gurdip Singh, despite the fact that he was owner only to the extent of 1/2 share, had got full registration of 11' x 40' instead of its half i.e. 40' x 5 1/2'. In order to grab the property, defendant Gurdip Singh got his wife Mrs. Sonia appointed as General Power of Attorney on dated 15.10.2005 of Mehar Chand in respect of house No. 207 with the authority to sell the said house. However, the said Attorney was attested only by Notary Public and was not registered one. Thus, Mrs. Sonia did not have power to execute Sale Deed. Subsequently, the said GPA was cancelled by Mehar Chand on 09.11.2005 which was duly conveyed to Mrs. Sonia, wife of Gurdip Singh/defendant. Thereafter, Mehar Chand had also sold his share measuring 40' x 5'-6" through registered Sale Deed dated 25.11.2005 to the plaintiff. It was pleaded that in view of the above facts, defendant was liable to handover the vacant possession to the plaintiff. Plaintiff had requested defendant no. of times to handover the vacant possession but all in vain. Hence, present suit was filed on 06.01.2006.



4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Chandigarh had dismissed the suit of the plaintiff vide judgment and decree dated 14.12.2012. The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Chandigarh vide judgment and decree dated 13.11.2015. Hence, the present second appeal by the plaintiff.

5. It is *inter alia* submitted by learned counsel for the appellant that the learned District Courts were in error in non-suiting the appellant as firstly, they have not taken into consideration the evidence brought on record by the plaintiff. It is submitted that Joginder Singh son of Ralla Singh sold his land to Mehar Singh vide sale deed dated 9.9.1983 and after the said purchase, said Mehar Singh raised construction beyond his share. A perusal of judgment and decree, Ex. P1 and P2 passed by learned Civil Judge [Senior Division] Chandigarh dated 13.1.1999 in a civil suit titled Naranjan Singh Vs. Mehar Singh, Mehar Singh and Naranjan Singh were held to be owner of land measuring 40'x5' each out of the total land of 40'x11'. Mehar Singh had sold his share of land measuring 40'x5' to the plaintiff-appellant vide registered sale deed dated 25.11.2005. Hence, it is clear that despite the fact that the plaintiff has brought on record sale deed dated 25.11.2005 as Ex.P9 wherein complete description has been shown, still learned trial Court has erred in law in holding that the it is not possible to co-relate the property and dismissed the suit.

6. Not only this, learned trial Court has failed to appreciate that plaintiff has filed the suit for possession and for permanent injunction and



the relief is being declined despite the fact that he has a valid and registered sale deed in his favour executed by Mehar Singh who had purchased the said validly from Joginder Singh son of Ralla Singh, vide registered sale deed dated 9.9.1983. Hence, the impugned judgment and decree is against the facts on record and is liable to be set-aside.

7. It is further submitted that the first Appellate Court while endorsing the aforesaid findings of the trial Court has failed to take into consideration the site plans filed by the appellant along with an application for additional evidence wherein the property was described in different colours to clarify and establish existence thereof. However, learned first Appellate Court failed to take note of this and upheld the judgment and decree passed by the trial Court.

8. It is further submitted by learned counsel for the appellant that Naranjan Singh son of Ralla Singh had three sons including Nirmal Singh. Said Naranjan Singh had gifted his share in the land in question vide registered gift deed Ex.P.1 in favour of three sons. The plaintiff purchased the suit land from Nirmal Singh alias Nimma vide registered sale deed dated 10.5.2005. Naranjan Singh had executed a sale deed on 6.8.2003 [Ex. D-9] in favour of the defendant-Gurdip Singh and despite the fact that he was owner of land measuring 35'x5/1-2', he wrongly, illegally and fraudulently sold area of land measuring 35'x11'. Learned Courts below have failed to take into consideration the fact that defendant-Gurdip Singh cannot claim the ownership of land measuring 35'x11' on the basis of sale deed dated 6.3.2003 and he can claim only to the extent of 35'x5-1/2' of which his



vendor was the owner. Hence, the impugned judgments and decrees passed by the Courts below are liable to be set-aside.

9. Learned counsel for the appellant further submits that First Appellate Court has passed the impugned judgement in mechanical manner without applying its independent judicial mind to the present case. It is pointed out that in the impugned judgment dated 13.11.2015, First Appellate Court has merely reproduced para 21 to para 23 of the Trial Court judgment dated 14.12.2012. It is contended that in the First Appeal, it is incumbent upon the learned First Appellate Court to reappraise the entire evidence on record and to discuss the same in detail while passing the judgment.

10. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

11. *Per contra*, learned counsel for the respondent/defendant opposes submissions advanced on behalf of the appellant and submits that cogent findings of fact have been rendered by both the District Courts after taking into account the entire factual matrix; as also the evidence led by both the parties. It is contended that therefore, this Court in Second Appeal cannot interfere in the findings of fact returned by both the District Courts. He accordingly prays for dismissal of the present Appeal.

12. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant.



13. No doubt in the First Appeal, the learned First Appellate Court is required to apply its independent judicial mind to the case and reappraise the entire evidence. However, in the peculiar facts and circumstances of the present case, wherein the facts are somewhat convoluted, and the entire factual matrix has been encapsulated comprehensively and cohesively by the learned Additional Civil Judge (Senior Division), Chandigarh in para 21 to para 23 of the judgment dated 14.12.2012, which read as under:-

“21. The plaintiff has sought the relief of recovery of possession of immovable property on the basis of sale deed Ex P4 alleged to be executed by Sh. Nirmal Singh son of Sh. Niranjan Singh. The plaintiff is making reference to judgement Ex P2 in which Niranjan Singh son of Sh. Ralla Ram and his vendor Mehar Chand son of Sh. Parsa Ram and Sh. Joginder Singh son of Sh. Ralla were the parties and that suit was decreed against Mehar Chand, vendor of plaintiff vide which Mehar Chand was directed to demolish the construction to the extent of half portion of the property measuring 40'x11' as fully detailed and described in the head note of judgement Ex P2. It is undisputed that the plaintiff was not party in that suit. The plaintiff has testified in his chief examination that one Ralla Ram was the owner of land measuring 40'x11' bounded from east: with street, West: with the house of Sh. Amrik Singh, north: with the house of Sh Sadhu Singh and south: with the house of Vinod Kumar situated within the Abadi Deh of village Dhanas, UT, Chandigarh. Upon the death of said Ralla Ram, his property was inherited by his two sons namely Naranjan Singh to the extent of half share and Joginder Singh to the extent of remaining half share. Sh. Naranjan Singh gave his share through gift in favour of his sons Raj, Lala and Nimma @ Nirmal by delivering actual possession of the said property in



favour of donee vide gift deed Ex P1. He further testified that Mehar Singh purchased half share of Joginder Singh vide sale deed dated 9-9-1983. Mehar Singh could have purchased only 35'x5' and not 35'x11' from said Naranjan Singh. Sh. Mehar Singh illegally and unlawfully raised construction beyond his share as a result of which Sh. Naranjan Singh filed suit for mandatory injunction and that was decreed and Sh. Mehar Singh (vendor of plaintiff) was directed to demolish the said construction except one half share. He further stated that Sh. Nirmal Singh son of Sh. Naranjan Singh executed sale deed of his self acquired property of two rooms, one hall, kitchen and toilet measuring 47'x12' bounded from east: with street, West: with the house of Amrik Singh, South: with the house of Dayal Singh and North: with the house of Gurdeep Singh, in his (plaintiff) favour on 10-5-2005 vide Ex P4. Sh. Gurdeep Singh, defendant despite the fact that he was owner only to the extent of half share, in order to grab the property, got his wife Mrs. Sonia appointed as General Power of Attorney of said Mehar Singh @ Mehar Chand in respect of house no.207 with the authority to sell the said house. No sale deed was executed in favour of Gurdeep Singh. Said Smt.Sonia wife of Gurdeep Singh did not have any power to execute the sale deed or transfer the property on the basis of General Power of Attorney dated 15-10-2005 vide Ex P5. He further stated that Mehar Chand sold his share measuring 40'x5'-6" bounded from North:with the property of Naranjan Singh, South: with the property of Vinod Kumar, East: with street and West: with the property of Amrik Singh vide site plan Ex P8.

22. Now, on the basis of chief examination of plaintiff, it has emerged that he be held to be entitled to recover the possession of suit property to the extent of half share of his vendor. However, first of all, it was bounden duty of plaintiff to



*give correct location, measurement and dimensions of the property which he is staking to recover from the defendant Gurdeep Singh. He is relying upon site plan Ex P8. Bare perusal of Ex.P8 shows that there is no clear dimension of the suit property and in the site plan the plaintiff has not given the measurement and identification of the suit property by virtue of which identity of suit property could be established. No evidence has been produced by the plaintiff to prove that the defendant has made any encroachment over his portion by virtue of which it could also be held that the plaintiff is entitled to the possession of suit property. The plaintiff has not produced any demarcation report nor he made any attempt to get his property demarcated in order to prove that the defendant Gurdeep Singh has encroached upon his property beyond the area which was allegedly purchased by Gurdeep Singh from his vendor. At this juncture, reliance is placed by me on the law laid down in case **Smt. Jhuri Vs Sarfraz Hussain 2009 (4) RCR (Civil) 813** wherein it was held that where the plaintiff is filing suit for possession on the basis that defendants had encroached a portion of her land and had raised on construction on that portion, but the plaintiff neither specified portion nor got the same demarcated on which defendant made encroachment by raising construction, then the plaintiff is not entitled for decree for possession.*

23. The plaintiff has also demolished his case in his cross examination by testifying the fact that site plan Ex P8 was prepared by him, but he did not show the boundary in his site plan. Meaning thereby, the exact location of the suit property has not been mentioned by the plaintiff in his site plan and in the absence of exact location, measurement, the identity of the suit property is not established. He further stated in the cross examination that he purchased 47x12 feet from Nirmal Singh



*vide registered sale deed on 10-5-2005 and he also purchased the area of disputed property from Mehar Singh measuring 40 x 5 ½ feet on 25-11-2005. As such, it was duty of the plaintiff to give exact area of entire property and thereafter he was supposed to prove that any area of his suit property has been encroached by the defendant and as a result of which he could be held entitled to recover the encroached property. But the plaintiff did not bother to prove the total area of his ownership on record and he also did not bother to examine any Draftsman for proving measurement of the suit property on the spot by dint of which the correct identity, and location of suit property could be known. Mere placing reliance upon the sale deed is not enough for the plaintiff to recover the possession of suit property without proving the identity of his property. Our own Hon'ble High Court in case **Jai Chand Vs Ram Singh 2008(1) CCC 570** has observed that where the plaintiff has instituted a suit for possession, but identity of property is not established, then the suit can not be decreed in favour of plaintiff. As such, this court is of the view that in the absence of any description, it is not possible to co-relate the property in dispute with the property purchased by the plaintiff. Further, the plaintiff admitted that he did not get the physical possession of disputed property from Mehar Singh, although in the sale deed Ex P9 it has been incorporated that possession was delivered to him. As such, recital of sale deed Ex P9 becomes incorrect. More surprisingly, the plaintiff did not bother to implead Smt. Sonia wife of defendant Gurdeep Singh against whom whom he is making attack that she was not attorney of Mehar Singh, nor he challenged the power of attorney of Smt. Sonia wife of defendant. The plaintiff was supposed to bring her on the record and he was also supposed to make attack on her power of attorney in order to get the setting aside of General Power of*



Attorney as well as sale deed in favour of Gurdeep Singh, defendant. Further, Sh. Gurdeep Singh, defendant has supported his case that he raised construction being owner of the property and he has also examined witnesses like DW-1 Amarpal and DW-2 Dinesh Devgan who brought the record relating to sale deed of house no.207. In cross examination of defendant Gurdeep Singh it has also come on record that defendant Gurdeep Singh purchased the land measuring 35'x11' on 6-8-2003 from Niranjana Singh and Smt. Sonia (wife of defendant) purchased land measuring 40'x11' from Mehar Singh on the basis of power of attorney. Meaning thereby, in order to recover the possession of immovable property, it was necessary for the plaintiff to implead Smt. Sonia wife of defendant Gurdeep Singh and it was also necessary for the plaintiff to examine Sh. Mehar Singh to prove that he never executed any power of attorney in favour of Smt Sonia wife of defendant. DW-5 Sh. Amar Singh who prepared the site plan Ex D23 has also supported the case of defendant by stating the fact in his cross examination that document of title of Gurdeep Singh, both of ground as well as first floor, were seen by him at the time of preparing the site plan. Evidence of this witness has gone unrebutted and unchallenged as this court has earlier stated that the plaintiff did not examine any Draftsman by whose evidence it could be established on record that the defendant has made encroachment in the suit property as alleged to be purchased by the plaintiff from his vendor. Other evidence on record is formal in nature and that is also not sufficient for the plaintiff to recover the possession of suit property from the defendant. As such, the plaintiff is not entitled to recover the possession of suit property. Since the plaintiff has failed to recover the possession of suit property, therefore, the plaintiff is also not entitled for relief of injunction



as prayed by him against the defendant. The plaintiff has totally failed to discharge the onus to prove both these issues, as a result of which both the issues are hereby decided against the plaintiff and in favour of defendant.”

14. On a direct Court query, learned counsel for the appellant has very fairly and candidly admitted that no error can be found in the findings of fact as recorded above by the learned trial court. As evident from the discussion hereinabove, it is seen that the present case is more fact oriented. In this situation, no error can be found in the judgment and decree of the first Appellate Court in relying upon the findings of fact of the trial court.

15. Furthermore, even this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon’ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned District Courts may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellant.

16. Learned counsel for the appellant is unable to controvert or dispute the above said facts, findings, and legal position.

17. In view of the above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed**.
18. Pending applications, if any, stand disposed of.

28.04.2026

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No