



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

218

RSA-4486-2015(O&amp;M)

Date of decision: 25.02.2026

Ganga Singh

...Appellant(s)

Vs.

Rakesh Kumar

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gurdev Singh Kuka, Advocate  
for the appellant.

Mr. Divanshu Jain, Advocate  
Mr. Arjun Sangwan, Advocate  
Mr. Minkal Rawal, Advocate  
Mr. Abhinav Goel, Advocate  
Ms. Rashima Sharma, Advocate  
for the respondent.

\*\*\*

NIDHI GUPTA, J.

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiff/respondent herein, for declaration and injunction, has been decreed by both the Courts below.

2. In the plaint, the plaintiff-respondent had asserted that plaintiff is owner in possession of the suit plot by virtue of Sale Deed No.4754 dated 16.03.2010 executed in his favour by Babu Ram/previous owner of the suit property. It was stated that defendant has no concern with the possession or



ownership of the disputed plot, but the defendant is a strong-headed person and is bent upon to encroach upon the suit land without having any right. The plaintiff had requested the defendant many times not to interfere in the peaceful possession of the plaintiff over the suit property but to no avail. Hence, present suit was filed on 28.04.2010 seeking declaration that plaintiff is owner in possession of the plot as described in the plaint; **and** for permanent injunction restraining the defendant from selling, mortgaging, leasing, alienating or interfering in the peaceful possession of the plaintiff and from encroaching upon the disputed plot.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Additional Civil Judge (Senior Division), Tohana, District Fatehabad had decreed the suit of the plaintiff with costs vide judgment and decree dated 12.09.2013 in the following manner:-

*“19. As a sequel to my above discussion, this suit filed by the plaintiff succeeds and the same is decreed with costs to the effect that the plaintiff is owner in possession of one plot measuring 22.31 square yards detailed and described in the head note of the plaint and defendant is restrained from selling, mortgaging, leasing, alienating or interfering in the peaceful possession of the plaintiff and he is also restrained from encroaching upon the said plot. Decree sheet be drawn accordingly and file after due compliance be consigned to the record room.”*



4. The Civil Appeal filed by the appellant/defendant was dismissed with costs by the Id. Additional District Judge, Fatehabad vide judgment and decree dated 28.04.2015. Hence, present Second Appeal by the defendant.

5. It is inter alia submitted by learned counsel for the appellant that the learned Courts below were in patent error in non-suiting the plaintiff as they failed to appreciate the duly proved averments of the defendant/appellant to the effect that the plaintiff/ respondent has not disclosed the fact as to from whom he had purchased the disputed plot. As a matter of fact, Babu Ram sold the disputed plot to the plaintiff-respondent during the pendency of the civil suit No.53 of 20.02.2010. Regarding the plot in dispute, earlier civil suit No.53 of 20.02.2010 titled as Babu Ram versus Ganga Singh was filed by Babu Ram and when no stay was granted to Babu Ram, he illegally sold the same to Rakesh Kumar despite the fact that Babu Ram himself was neither owner nor in possession of the same. The plaintiff is fully aware of the fact regarding the pendency of the civil suit No.53.

6. Ld. Counsel further submits that it was also duly averred and proved by the appellant that on the disputed plot and adjacent to the disputed plot, since 1977 Gurudwara is in existence and earlier the property No. of the said Gurudwara was 272 Ward No. 10 and now the same has been given the property No.279/4. The Gurudwara was known by the name of 'Gurudwara Banda Bahadur' and Charan Singh son of Sunder Singh was made Sewadar/ Head Granthi of the Gurudwara, however, out of greed the said



Charan Singh son of Sunder Singh started alienating the land of Gurudwara, therefore, he was got removed from his post in the year 1990 and the defendant as well as Ajit Singh were appointed as Jathedars of Gurudwara and the name of Gurudwara was also changed and presently the same is known as 'Gurudwara Ban Sahab Chhavni Nihang Singh Budha Dal' and every day Satsang and Ardas are performed in the said Gurudwara. Ajit Singh after some time left his post whereas the defendant is still Granthi/ Sewadar/ Jathedar of Gurudawara. It is further submitted that previously the land adjacent to disputed plot was owned by Custodian Department and was sold in the year 1975 to Sadhu Ram in auction proceedings. Since Sadhu Ram failed to pay the auction amount he sold the same in favour of Sardar Sikandar Singh and Colonel Bhim Singh who donated the said land along with other land adjacent to him to Gurudwara in the year 1975 upon which Gurudwara was constructed in the year 1977. To grab the property, earlier bearing No.272, Ward No.10, a civil suit No.1746 of 1990 was filed by Charan Singh against Ganga Singh and thereafter a compromise was effected and the land measuring 5 marlas was given to Charan Singh towards northern side from the property bearing No.272 Ward No.10 and the suit was decided on the basis of agreement. If any site plan was got sanctioned by Babu Singh or plaintiff illegally, then the defendant is not bound by the same. It is reiterated that the plaintiff is not owner in possession of the plot in dispute.



7. Ld. Counsel further contends that the Id. courts below have erred in not appreciating the evidence in favour of the appellant as in order to prove the averments made in the written statement, the defendant examined Jitender Kumar, Clerk, M.C. Tohana as DW1 who brought the summoned record and proved the copy of assessment register regarding the property in dispute. DW2 Prem Mehta, Draftsman proved the site plan Ex.D1 prepared by him and Sher Singh DW3 tendered his affidavit Ex. DW3/A, in his examination in chief reiterating and confirming the written statement and Jagga Singh appeared as DW4 and he tendered his affidavit Ex. DW4/A in his examination in chief to corroborate the testimony of DW3 Sher Singh on material points. Atam Parkash, Registration Clerk was examined as DW5 who brought the summoned record regarding sale deed No. 4754 dated 16.03.2010. The defendant himself appeared as DW6 and tendered his affidavit Ex. DW6/A. However, the learned courts below have given unnecessary importance to the evidence led by the Respondent, whereas documentary evidence supports the case of the Appellant, which has been ignored without giving any cogent reason.

8. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees be set aside.

9. Per contra, learned counsel for the respondent/plaintiff vehemently opposes the submissions advanced on behalf of the appellant and submits that both the Courts below have given cogent concurrent



findings that the appellant has no connection whatsoever with the suit plot. Even possession of the respondent over the suit plot has been proved. The appellant has been unable to prove in what manner and on what basis he is laying claim to the suit property. On the other hand, the respondent has produced registered Sale Deed in his favour. The plaintiff had further proved that he had got his Site Plan sanctioned from the Municipal Council, Tohana.

10. It is clarified that in respect of the previous Civil Suit No.53 of 2010 titled as “Babu Ram Vs. Roop Singh”, both the Courts have found that the said Suit was not decided on merits and had been dismissed as withdrawn; and the dimensions of the suit plot are different from the disputed plot in the aforesaid Civil Suit No.53 of 2010. It is submitted that therefore, the said Civil Suit has no relevance with the present suit land. Accordingly, dismissal of the present appeal is prayed for.

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

12. The plaintiff has duly proven on record that he is owner in possession of the suit plot by way of registered Sale Deed No.4754 dated 16.03.2010 (Ex.P1). Firstly, Sale Deed in favour of the plaintiff is a registered document. Therefore, presumption of truth is attached to the same.

13. Furthermore, the plaintiff has proved execution of the said Sale Deed by examining PW5 Scribe of the said Sale Deed, who had produced his



Register (Ex.PW5/A) reflecting the entry of the said Sale Deed. Ownership of the plaintiff over the suit plot is further irrevocably established from the fact that the plaintiff had also produced Site Plan sanctioned by the Municipal Corporation which mentions the boundaries of the suit plot which is as per the boundaries mentioned in the Sale Deed. The plaintiff had also examined PW2 Anil Kumar, Building Inspector, Municipal Corporation; and PW3 Ashok, Draftsman, who had proved the Site Plan produced by the plaintiff and therefore, proved the identity of the suit plot beyond reasonable doubt. The plaintiff had also produced Ex.P4/Property Tax Receipt regarding payment of property tax of Rs.14,672/- issued by the Municipal Council, Tohana. The plaintiff had also produced Ex.P5, which is the copy of Register of building applications of the Municipal Council, Tohana, which reflect the ownership of the plaintiff over the suit plot. It is clearly mentioned in the Sale Deed that possession of the suit plot was handed over to the plaintiff at the time of execution of the Sale Deed. Nothing to the contrary has been brought on record by the defendant.

14. Further, it is established position in law that as per Section 68 of the Indian Evidence Act, attesting witnesses to the Sale Deed are not required to be examined unless the execution of the Sale Deed is denied by the executant. In the present case, Babu Ram, vendor of the plaintiff/executant of the Sale Deed dated 16.03.2010, has not denied executing the same. In this manner, the plaintiff had duly proved the execution of the registered Sale



Deed No.4754 dated 16.03.2010 (Ex.P1) in his favour; and therefore, his ownership over the suit property.

15. On the other hand, there are concurrent findings of fact by both the District Courts to the effect that the defendant had failed to lead any evidence whatsoever to prove that the suit property was part of any land owned by the Gurudwara Sahib. The defendant had merely produced one private Site Plan (Ex.D1) and photocopy of Assessment Register. However, both the above-said documents do not in any manner establish the title of any Gurdwara Sahib over the property in dispute. In fact, defendant has failed to produce any record whatsoever to link the suit property with any Gurdwara Sahib.

16. Moreover, the defendant while appearing as DW6 has admitted in his cross-examination that defendant has not produced any authorisation letter or Resolution on behalf of Gurdwara Sahib whom he claims to be representing; and even no Letter/Order showing the defendant to be custodian or caretaker of the said Gurdwara Sahib.

17. Argument of the appellant regarding Civil Suit No.53 dated 20.02.2010 titled as "Babu Ram Vs. Roop Singh" is also liable to be rejected as admittedly the said Civil Suit was not decided on merits and had been dismissed as withdrawn vide order dated 24.04.2010. It is further not disputed by learned counsel for the appellant that the dimensions of the plot



in the Civil Suit No.53 do not tally with the dimensions of the disputed plot in the present Civil Suit.

18. Perusal of the case file further reveals that defendant had raised another plea before the Courts below that the issue regarding the present suit plot had already been previously decided by the Civil Court vide Civil Suit No.380 of 2011 vide judgment and decree dated 31.07.2013. However, the said plea of the appellant was also rejected by the learned District Courts as the plot in dispute in the aforesaid Civil Suit No.380 of 2011 did not tally with the dimensions of the present suit plot. It may be mentioned that before the learned First Appellate Court, the appellant had sought to tender copy of the judgment dated 31.07.2013 by way of additional evidence. However, from the said judgment dated 31.7.2013, it was discernible that the disputed plot in the said Civil Suit No.380 of 2011 did not tally with the present suit plot. Accordingly, the application of the appellant for additional evidence was dismissed by the First Appellate Court as the said judgment dated 31.07.2013 was not found to be relevant for proper adjudication of the present suit.

19. Relevant findings of the learned First Appellate Court as contained in Para 18 of the judgment dated 28.04.2015 read as follows:

*“18. To prove his case, the plaintiff proved his sale deed and further he also proved its site plan got sanctioned from M.C., Tohana. However, the defendant - appellant did not lead any evidence to show that suit property was part of land owned by Gurudwara Sahab nor any evidence was led to prove that he was*



*appointed as care taker of said Gurudwara Sahab. Even though, a site plan Ex. D1 was tendered in evidence by the appellant - defendant to prove the title of the Gurudwara Sahab over the disputed property or that disputed property was part of land owned by Gurudwara Sahab. However, mere site plan Ex.D1 does not prove the title of Gurudwara Sahab and similarly, the photo copy of assessment register also does not create any title or interest in Gurudwara Sahab and it also does not prove that the entries in the register of M.C. in favour of Gurudwara Sahab relate to which land in the revenue record. The appellant-defendant himself appeared DW6 but while appearing as DW6 also he unable to prove any fact. In his cross- examination, he stated that there is no registered sale deed or title deed relating to the suit property in favour of Gurudwara Sahab and any writing in his favour to prove that he is care taker of the Gurudawara Sahab nor any power of attorney and authority letter has been executed in his favour on behalf of Gurudwara Sahab. Thus the pleadings of the appellant-defendant are without any supporting evidence to show their title or interest in the suit property whereas the respondent- plaintiff has proved his title on the basis of registered sale deed which has been recognized*

*by the M.C. Tohana by passing the site plan relating to the suit property and the sale deed in his favour has also been registered. Further, learned civil court has rightly observed that the plea of appellant - defendant that the suit property was also subject matter in earlier suit no. 53 of 20.2.2010 Babu Ram Versus Roop Singh cannot be accepted as the dimension of the disputed plot*



*in that suit does not tally with dimension of disputed property in this suit. Further Anil Kumar, Building Inspector who appeared as PW2 and Ashok Dora, draftsman who appeared as PW3 and the sale deed Ex.Pl itself prove the identity of the disputed plot clearly. So on the preponderance of probability, the respondent - plaintiff was able to prove his case and the appellant - defendant failed to discharge the onus to prove his case as set up in the written statement and to dispute the claim of the respondent - plaintiff in the suit property. So learned civil court has rightly decided issues no. 1 and 2 in favour of respondent - plaintiff."*

20. Last but not the least, it is no longer res Integra that this Court in second appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) :**

**Law Finder Doc ID # 2034559**, as under:-

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

*"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."*



15. *It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”*

21. In the present case, no such error or defect in procedure has been pointed out by learned Counsel for the appellant.
22. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings, as also the legal position.
23. In view of the above, present Second Appeal stands **dismissed**.
24. Pending application(s) if any also stand(s) disposed of.

25.02.2026  
Sunena

(Nidhi Gupta)  
Judge

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No