

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

**RSA-1542-1993 (O&M)
Reserved on :- 21.08.2025
Date of Pronouncement:-26.08.2025**

Parkash and Others

... Appellants

Versus

Raj Kumar @ Raja (Since deceased) through LRs and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

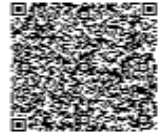
Mr. Brijesh Kumar, Advocate
for the appellants.

Mr. Harsh Aggarwal, Advocate
for the respondents No.1 and 2.

VIRINDER AGGARWAL, J.

1. The appellants/plaintiffs have instituted the present Regular Second Appeal (hereinafter to be referred to as 'RSA'), challenging the judgment and decree dated 03.04.1993 passed by the learned Additional District Judge, Jind. By the said judgment, the learned First Appellate Court allowed the appeal preferred by the respondents/defendants and set aside the judgment and decree dated 17.03.1992 passed by the learned Additional Senior Sub-Judge, Narwana in favour of the appellants/plaintiffs. Aggrieved by the reversal of the lower Court's findings, the appellants have approached this Court seeking restoration of the decree granted in their favour.

2. Briefly facts of the case are that the appellants/plaintiffs filed a suit for permanent and mandatory injunction claiming themselves to be



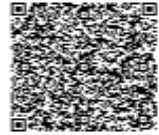
owners in possession of the suit land and that defendants are trying to interference in the possession of the plaintiffs and for mandatory injunction to remove the construction if they have raised any, on the plot in dispute. Plaintiffs claimed that defendants have collected bricks at the spot and wanted to raise construction for which they have no legal right to do so, hence the suit.

3. Suit was contested by defendants No.1 and 2 by denying the ownership and possession of the plaintiffs and has alleged that vide sale deed dated 30.06.1980, plaintiff-Parkash Kaur has sold the suit land to Smt. Saroj Devi and thereafter Saroj Devi sold the plot vide sale deed dated 23.01.1981 to Sadhu Ram, who exchanged the land with answering defendants in the month of December, 1981 and since then are in possession of suit land and they further raised plea that they are raising construction over plot in dispute legally and prayed for dismissal of the suit.

4. Defendants No.3 to 6 filed written statement admitting the claim of the plaintiffs, whereas names of defendants No.7 and 8 were struck off as per statement of counsel for the plaintiffs dated 22.07.1988.

5. Replication was filed by the plaintiffs reiterating the contents of the plaint and denying the averments of the written statement. From the pleading of the parties following issues were framed which are as under as:-
framed:-

1. Whether the plaintiffs and defendants at No.2 are owners in possession of the suit property as alleged?OPP
2. If issue No.1 is proved then whether the plaintiff is entitled for the relief of permanent injunction as alleged? OPP
3. Whether the suit does not lie in the present form? OPD
4. Whether the suit is *mala-fride*? OPD



5. Whether the suit property was sold to Saroj per sale deed dated 30.06.1980 and thereafter Smt. Saroj Devi sold the same to Sadhu s/o Manhar on 23.01.1981, if so its effect? OPD
6. Whether Sadhu has transferred the suit land in favour of defendant set No. 1 in December, 1981, if so its effect? OPD
7. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD
8. Relief.

6. Both the parties were given opportunities to lead the evidence and after hearing the arguments, the learned Additional Senior Sub-Judge, Narwana decreed the suit and granted mandatory injunction, directing defendant No.1 to deliver back the possession of plot in dispute to the plaintiffs as defendants have undertaken by way of surety bond dated 22.09.1989 that they would remove the construction raised on the plot in dispute without claiming compensation.

7. Aggrieved by the judgment and decree so passed, an appeal was filed and the learned Additional District Judge, Jind allowed the appeal by setting-aside the judgment and decree so passed by the learned Court below and dismissed the suit of the appellants/plaintiffs.

8. Aggrieved by the judgment and decree so passed by the learned Additional District Judge, Jind, appellants filed the instant appeal. Notice of motion of the appeal was issued, respondents appeared through their counsel and record was requisitioned.

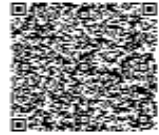
9. Learned counsel for the appellants has assailed the judgment and decree so passed by learned Additional District Judge, Jind on the grounds that the learned Appellate Court has failed to consider the undertaking of the respondents/defendant submitted before the learned Additional District Judge



on 22.09.1989. Learned counsel for the appellants further submitted that the learned Appellate Court has failed to consider the ownership of plot in dispute. Learned Court further failed to consider that in the plaint, plaintiffs have asserted that defendants are constructing walls with the bricks lying on the plot. Learned First Appellate Court has wrongly recorded that plaintiff failed to prove their possession. The whole approach of the learned First Appellate Court was wrong as without recording a finding on issues No.5 and 6, it was impossible to decide issue No.2, so appeal be allowed and the impugned judgment and decree passed by the learned First Appellate Court be set aside and that of the learned Additional Senior Sub-Judge, Narwana be restored.

10. Learned counsel for the respondents/defendants argued that there is no illegality, infirmity in the finding recorded by the learned First Appellate Court. The learned First Appellate Court has rightly come to the conclusion that in order to decide the suit for injunction only possession is required to be decided and if it is found that plaintiffs were not in possession at the time of filing of the suit, then she is not entitled to injunction as prayed for and it has been held defendants were in possession over the suit land before filing of the suit as they had raised boundary wall and all the walls of two rooms, but only the roof was laid by seeking permission of the Court during pendency of the suit, so appellants/plaintiffs were non-suited rightly and no ground is made out to interfere with the well-reasoned judgment of the learned First Appellate Court and prayed for dismissal of the appeal.

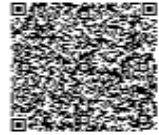
11. I have considered the submissions made by learned counsel for the appellants/plaintiffs but find the same to be devoid of merit.



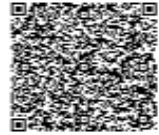
12. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the 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 case 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 question of law is required to be framed.

13. Plaintiffs have filed the suit with regard to a plot in question. Plaintiffs have nowhere pleaded that she has raised any construction in the plot in dispute and the learned First Appellate Court has rightly discussed all this evidence in para No.8 of the impugned judgment, which reads as under:-

“8. First of all, it may be mentioned that the suit of the plaintiffs is a suit for permanent injunction. The plaintiffs are claiming their ownership and possession over the suit property measuring 5 Marlas bearing rectangle and Killa No.175/17/5 situated in the abadi of Narwana. In injunction suit, ownership is not of much significance. The possession of the party is to be considered and is the most material aspect to be considered. At the outset it may be mentioned that learned counsel for the plaintiffs-respondents have cited before me authority Sh. Amrao Singh vs. Sh. Sanatan Dharam Sabha 1984 Punjab Law Journal 542 in support of his contention that even if the plaintiffs are in possession of a suit property, they are not entitled to injunction against the defendant if the plaintiff's title is not better than that of defendants but out this authority does not help the plaintiffs-respondents in ally manner because it is the

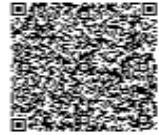


plaintiffs who have come to the court to seek the relief of injunction. The question of title in an injunction suit is the secondary aspect. The primary aspect is whether the plaintiffs are proved in possession of suit property at the time of institution of the suit. The present plaintiffs have not asserted any acts of possession over the suit property in the plaint. It is nowhere asserted by the plaintiffs that the boundary wall constructed by them is existing on the suit property. Neither it is stated as to in what form they are in possession. On the other hand, Raja and Risala defendant set No.1 are asserting specifically that they are in possession of the suit property as owners since 1961 and there is constructed boundary wall and two rooms without roof are also constructed over the suit property. It is also asserted by the defendants in the written statement that sufficient construction has already been raised and they are raising construction over their suit property. These averments made by the defendants are not specifically denied in the replication by the plaintiffs. Replication is also part of the pleadings and it is well settled that if a party fails to controvert the allegations or its adversary specifically, the facts which are not controverted specially, would be admitted to be accepted as correct. Further it has transpired from the very statement of Chhajju PW-1 that on the plot in dispute, there is constructed boundary wall and two kothas and it is also admitted by him that these constructions have been raised by defendant from set No.1. Satpal PW-2 has also stated that house has been constructed by Risala and Raja defendants over the plot in dispute. Parkash plaintiff No.1 as PW3 in cross-examination has stated that there are constructed two rooms and boundary wall over the plot in dispute and it is also stated by her that she had constructed the rooms and the boundary wall over the plot in dispute and at the time of



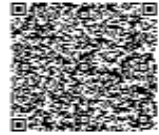
institution of the suit, boundary wall was filled by her. She has further stated that with the order of the Court, the roof has been laid by the defendant set No.1 on the two rooms after the institution of the suit. In this way, as per statement of Smt. Parkash plaintiff PW3, boundary wall and two rooms without the roof were constructed by her but it is nowhere the pleadings of the plaintiffs in the plaint and this statement of Parkash Devi plaintiff PW-3 as such does not inspire confidence and is liable to be excluded from consideration being beyond pleadings. Mere fact that in view of the permission of the Court on the undertaking of the defendant Set No.1, they have been permitted to lay roof on the two rooms, it cannot be assumed that the entire construction has been raised by the defendant set No.1 after the institution of the suit. Neither it is the version of the plaintiffs nor it is stated by the plaintiff or the witnesses produced by them that the defendants raised constructions quickly. The fact remains that the boundary wall and two rooms without roof were already existing on the suit property at the time of institution of suit and from the evidence adduced, in view of the pleadings of the defendants at the earliest that the defendant set No.1 had raised these constructions and were in possession of the suit property prior to the institution of the suit. The permission of the Court to lay roof on the undertaking of defendant set No.1 is not to be mis-understood while considering this aspect as to which of the parties was in possession of the suit property at the time of institution of the suit.”

14. A reading of testimony of plaintiffs and witnesses show that plaintiffs or witnesses produced by the plaintiffs have not stated anywhere that plaintiffs have raised construction in the shape of boundary wall or walls of the rooms, rather PW-2 has stated that house has been constructed in the



plot in dispute by Rishala and Raja, defendants. Plaintiff-Parkash Kaur appearing as witness in cross-examination has denied existence of two rooms and boundary walls over plot in dispute. Later on, she stated that she has raised the boundary wall whereas in the plaint, plaintiffs have nowhere stated that they have raised any construction in the plot in dispute.

15. No doubt, respondents/defendants have made roof over the walls by seeking permission from the learned Additional District Judge, during the pendency of the suit, but that does not prove that the boundary wall and the walls were not in existence before filing of the suit. The learned Additional Senior Sub-Judge, Narwana recorded its finding merely on the basis of undertaking given in the Court of learned Additional District Judge by the defendants. Learned Additional Senior Sub-Judge failed to take into notice that the permission sought was only for laying the roof not for construction of boundary wall or raising of the walls, so it was for the plaintiff to prove on record that boundary wall and walls of rooms were raised by the defendants during the pendency of the suit or the same were raised by the plaintiffs. It is not the case of the plaintiffs that they had raised the boundary walls and roofs of the rooms. It is not proved on record as to on which particular date, defendants took possession of the plot in dispute forcibly or has raised boundary wall and constructed the walls of the two rooms. So the learned Additional District Judge has rightly concluded that in order to decide a suit for permanent injunction and mandatory injunction, what was relevant was the possession over the plot in dispute on the date of filing of the suit and the question of ownership was left open by him to be decided in appropriate proceedings. There is nothing wrong in the approach of learned First Appellate Court by leaving open the question of ownership when plaintiffs



have failed to prove on record that plaintiffs have been dispossessed from the plot in dispute from during the pendency of the suit or that any construction has been raised over plot in dispute during pendency of the suit.

16. In view of the foregoing discussion, this Court finds that the learned First Appellate Court has rightly arrived at the conclusion that the plaintiffs, having failed to establish that they were in actual and physical possession of the suit property as on the date of institution of the suit, are not entitled to the relief of permanent or mandatory injunction as prayed for. It is well-settled in law that a party who is not in possession cannot seek an injunction simpliciter, and the appropriate remedy in such circumstances would be to institute a suit for possession in accordance with law. This Court has carefully examined the findings recorded by the learned Additional District Judge and does not find any illegality, perversity, or material irregularity therein that would warrant interference in the present appeal. The conclusions drawn are well-reasoned and supported by the evidence on record. Accordingly, finding no merit in the present appeal, the same stands dismissed.

17. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

26.08.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes

Whether reportable? Yes