



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

**RSA-2268-2019 (O&M)
RESERVED ON: 07.08.2025
PRONOUNCED ON: 08.08.2025**

SUBHASH CHANDER GARG

.....APPELLANT

VERSUS

PALE RAM AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Kulvir Narwal, Advocate
for the appellant.

Mr. N.C. Kinra, Advocate and
Mr. Apoorva Kinra, Advocate
for the respondents.

MANDEEP PANNU, J

1. Present Regular Second Appeal has been filed by the appellant/plaintiff assailing the correctness of the concurrent findings of the facts arrived at by the Courts below while dismissing the suit for permanent injunction.

BRIEF FACTS

2. Brief facts of the present case are that Subhash Chander Garg-appellant/plaintiff filed a suit claiming that he alongwith his family members was the successor-in-interest of one Kripa, who was the original owner of the suit property. He further claimed that at the time of institution of the suit,

he along with his brothers and cousins were owners in possession of the suit property though he and his family reside at Bahadurgarh. Respondents/defendants taking advantage of the situation had filled up the plinth in the plot intending to forcibly encroach upon the property and dispossess the appellant/plaintiff. Upon this, appellant/ plaintiff got the property demarcated per orders of the SDM, Rohtak. He requested the respondents/defendants to refrain from encroaching upon the suit property but they have declined which necessitated the appellant/plaintiff to file present suit seeking a decree to restrain the respondents/defendants from dispossessing or interfering in his possession by raising construction over it.

The respondents/defendants appeared and resisted the claim of the appellant/plaintiff by alleging that the appellant/plaintiff was neither a resident of village Hassangarh nor had he ever resided there. Respondents/defendants are in possession of the suit property. The present suit has been instituted merely to dispossess respondent No.1 and the elderly mother of respondent No.3. The respondents/defendants had filled the foundation 20 years ago and using the suit property.

ISSUES FRAMED BY THE TRIAL COURT

- (I) Whether the plaintiff is entitled to the decree of permanent injunction on the grounds mentioned in the plaint? OPP
- (ii) Whether the present suit filed by the plaintiff is not maintainable in the present form? OPD
- (iii) Whether the plaintiff has not come to the Court with clean hands or suppressed the material facts from the Court, if so to what effect? OPD

(iv) Whether the plaintiff has no locus standi or no cause of action to file the present suit? OPD

(v) Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD

(vi) Whether the present suit is barred by limitation? OPD

(vii) Relief.

EVIDENCE ADDUCED

3. In order to prove his case, the appellant/plaintiff-Subhash Chander Garg himself appeared as PW-1 and Krishan Kumar, Patwari as PW-2. In documentary evidence, the appellant/plaintiff tendered Ex P-1 to P-8 and Mark A to Mark D.

4. On the other hand, respondents/defendants have examined Pale Ram as DW-1, Hukam Chand Ex. Sarpanch as DW2, Tara Chand as DW3, Sube Singh Saini as DW4, Suresh @ Bittu as DW5 and Jaipal as DW6.

REASONS RECORDED BY THE COURTS BELOW

5. Learned trial Court dismissed the suit of the appellant/plaintiff vide order dated 24.08.2016 mainly on the ground that the appellant/plaintiff has not proved his right as he has not stepped into the witness-box for cross-examination. As such, his evidence cannot be read. Similarly, Lower Appellate Court has dismissed the appeal vide order dated 29.08.2018 by observing that the testimony of PW-1 could not be relied upon to support the appellant/plaintiff's case, as he had been negligent in not presenting himself for cross-examination. The findings of the learned trial Court were upheld, and the appeal was dismissed.

ARGUMENTS ADVANCED BY COUNSEL FOR THE PARTIES

6. Learned counsel for the appellant has argued that the Courts below erred in ignoring the appellant/plaintiffs' documentary evidence (Ex. P-1 to P-8) and wrongly held that the settlement record of 1909-1910 was not produced. In fact, that settlement was never finalized or implemented and only the 1879 settlement is valid and recognized. It has been further argued that the Courts below also failed to consider that the appellant/plaintiff appeared as a witness and tendered his affidavit and his cross-examination was deferred at the request of respondents/defendants on 08.01.2015, and a review of subsequent *zimni* orders confirms the appellant/plaintiff's continued presence. Therefore, the lack of cross-examination cannot be held against the plaintiff.

He further argues that the Courts below failed to properly consider the pleadings of the parties regarding the existence of the damaged godown, temple, etc. The respondents/defendants could not produce any evidence to prove their title or possession. Moreover, the testimony of DW-2 Hukam Chand significantly undermines the respondents/defendants' case and supports the appellant/plaintiff's version when read alongside the plaintiff's evidence. Lastly, learned counsel for the appellant argues that the Courts below ignored the testimony of PW-2, namely, Krishan Kumar Patwari, and the documentary evidence based on old official records. The oral evidence was secondary, and if doubts existed, the court could have directed further clarification from the official or higher authority. The appellant/plaintiff took all necessary steps, and any lapse should not have led to dismissal of the suit, especially when sufficient evidence was available.

7. On the other hand, learned counsel for the respondents has argued that there is no illegality in the impugned judgments and decrees passed by the Courts below vide which the suit of the appellant/plaintiff was dismissed and appeal filed by appellant/plaintiff was also dismissed.

ANALYSIS AND DISCUSSION

8. Since, the suit of the appellant/plaintiff has been dismissed mainly on the ground that he was not been able to prove his possession over the suit property by not leading sufficient evidence particularly by not subjecting himself for cross-examination, a perusal of zimni orders of the learned trial Court is relevant to decide the controversy in hand.

9. Perusal of the certified copy of zimni order dated 08.01.2015 passed by CJ(JD), Rohtak in the present suit titled 'Subhash vs Pale Ram' reveals that PW Subhash Chander was present and his examination-in-chief was recorded but on the request of opposite counsel, his cross-examination was deferred. However, one opportunity was given to the appellant/plaintiff for adducing the evidence subject to the payment of costs of Rs.500/- and the case was adjourned to 10.02.2015 for remaining evidence. Again as per order dated 10.02.2015 passed by learned Civil Judge (Jr. Division), Rohtak, two PWs were present including Subhash Chander-appellant/plaintiff, whose signatures were obtained on the left side of the margin of the order-sheet to mark his presence but it has been mentioned in the order that he could not be examined due to unavoidable circumstances. He was bound down for the next date i.e. 11.03.2015. Again on 11.03.2015, the appellant/plaintiff along with one other witness was present but was not examined due to unavoidable circumstances and he was again bound down for next date i.e. 07.04.2015. Perusal of order dated 07.04.2015 reveals that no PW was present and the

case was adjourned to 13.05.2015 and last opportunity was granted to the appellant/plaintiff to conclude the evidence. On 13.05.2015, PW-2 Krishan Kumar was present and was examined but the remaining evidence of the appellant/plaintiff was closed by Court order by observing that sufficient opportunities were granted to the appellant/plaintiff to bring his evidence and it was the last opportunity for the appellant/plaintiff to examine his witnesses. Under those circumstances, the evidence of the appellant/plaintiff was closed by order.

10. A perusal of the above-said zimni orders would reveal that appellant/plaintiff after examining himself in his examination-in-chief has subjected himself for cross-examination on three subsequent dates but his cross-examination was not conducted by the learned counsel for the respondents/defendants for one reason or the other. Learned Civil Judge (Jr. Division), Rohtak instead of giving last opportunity to the respondents/defendants to cross-examine the witness, granted last opportunity to the appellant/plaintiff to conclude the evidence ignoring the fact that the appellant/plaintiff was coming present and subjecting himself for cross-examination and it was the opposite counsel who was not cross-examining him.

11. Learned trial Court has wrongly observed in para No.12 of the judgment that the appellant/plaintiff never got himself cross-examined and any witness who has not gone through the rigors of cross-examination, his examination-in-chief cannot be taken into consideration. There is no dispute to the settled law that uncrossed testimony cannot be read into evidence but the Court should have been mindful of the fact that the appellant/plaintiff had been coming present on various dates and subjecting himself for cross-

examination and it was the counsel for the respondents/defendants who was not cross-examining the witnesses. Similarly, learned Lower Appellate Court wrongly observed in para No.11 of the impugned judgment that the appellant/plaintiff did not turn up before the trial Court once his examination-in-chief was recorded. It is on the basis of above said observations, both the learned Courts below found dearth of evidence on the part of the appellant/plaintiff and accordingly, dismissed the suit of the appellant/plaintiff. Thus, considering the nature of the controversy and the fact that the appellant/plaintiff's testimony formed the foundation of the decree, it is necessary, in the interest of justice, to afford one opportunity to the appellant/plaintiff to make himself available for cross-examination. The appellant/plaintiff should not be made to suffer due to the inaction of the other party.

DECISION

12. Consequently, the impugned judgments and decrees dated 24.08.2016 and 29.08.2018 passed by both the Courts below are hereby set aside and the case is remanded back to the learned trial Court to decide the matter afresh by affording one effective opportunity to the appellant/plaintiff, who shall make himself available for cross-examination on which date the counsel for respondents/defendants would cross-examine him and if the same is not concluded in one date, the case shall be adjourned to the next working day for cross-examination of the appellant/plaintiff.

13. Accordingly, the present appeal is disposed of in the aforesaid terms.

08.08.2025

Poonam Negi

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

**(MANDEEP PANNU)
JUDGE**