



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

119

RSA-1998-2022 (O&M)

Date of Decision : 21.01.2025

BALDEV DASS

.... Appellant

VERSUS

SUBHASH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikrant Rana, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been filed by the plaintiff-appellant challenging the judgments and decrees dated 12.05.2015 and 04.11.2019 passed by the Trial Court and the First Appellate Court, respectively.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed the present suit seeking a decree for declaration to the effect that he is owner of the shop in dispute and that the defendant-respondents have no concern with the ownership rights of the said shop. Further a decree of permanent injunction was also sought. It was the case set up by the plaintiff-appellant that he had purchased the suit property from one Om Parkash vide registered sale deed No.4344 dated 16.03.1989. Om Parkash was the owner of the suit property by virtue of sale deed No.10485 dated 14.08.1986. It was further the case set up that the plaintiff-appellant had raised construction over the purchased property in the year 1989 and

given it to the defendant-respondent No.3 on rent @ ₹1,400 per month. It was further averred that defendant-respondent No.3 was not paying the rent and defendant-respondents No.1 and 2 are relatives of defendant-respondent No.3 and they in collusion with each other were trying to defeat the rights of the plaintiff-appellant. Hence, the present suit.

3. The suit was contested by defendant-respondent No.1 in which he raised various preliminary objections qua maintainability. On merits it was averred that the plaintiff-appellant had no right, title or interest in the suit property and that defendant-respondent No.1 was the lawful owner in possession of the shop in dispute which was constructed on a part of the plot comprised in Khasra No.800. It was further the case set up that defendant-respondent No.1 had purchased the property measuring 1 Marla out of Khasra No.800 from its previous owner, namely, Devi Daya Verma son of Roop Chand Verma who was recorded owner in possession of the same in the revenue records pursuant to the sale deed No.9320 dated 09.08.1989. It was further averred that the shop in dispute was purchased by defendant-respondent No.1 vide sale deed No.2692 dated 05.11.1990 for a consideration of ₹4,000 (rupees four thousand) and thereafter the shop was constructed and let out to defendant-respondent No.3 in the year 2001. It was further the stand taken that sale deed dated 16.03.1989 does not relate to the plot underneath the disputed shop. Neither the plaintiff-appellant nor Om Parkash was in occupation in any capacity of the plot on which the shop had been constructed. Suit qua defendant-respondent No.2 was dismissed vide

order dated 29.08.2013 as *munadi* fee was not deposited for service of summons. Defendant-respondent No.3 filed a separate written statement.

4. Replication was not filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of declaration as well as for permanent injunction (Prohibitory) as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable in its present form ? OPD
3. Whether the plaintiff is estopped from filing the present suit by her own act and conduct ? OPD
4. Whether the plaintiff has no *locus standi* and cause of action to file the present suit ? OPD
5. Relief.

5. The Trial Court vide judgment and decree dated 12.05.2015 dismissed the suit with costs. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 04.11.2019. Hence, the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant had proved his ownership over the suit property. It is further the contention that the shop had been constructed over an area of 45 square yards and that defendant-respondent No.1 owns only 30 square yards area which he had purchased vide sale deed dated 05.11.1990.

7. Heard.

8. In the present case both the Courts concurrently found that the plaintiff-appellant had failed to prove that he is owner of the suit property although it was the case set up by the plaintiff-appellant that he had purchased the property from one Om Parkash vide sale deed dated 16.03.1989. However, as per the contents of the said sale deed the plaintiff-appellant had purchased fifteen and a half Marlas of land. The plaint itself was totally silent qua this aspect. It was further found by both the Courts that the plaintiff-appellant had not purchased a specific portion but had purchased a share from Om Parkash. It has further come in the cross-examination of the plaintiff-appellant himself that out of the land purchased by him, he sold 365 square yards. Even qua the construction of the shop there was no cogent evidence led by the plaintiff-appellant. Infact, in his cross-examination the plaintiff-appellant stated that he had no information as to whether any Municipal Unit Number had been allotted to the shop or not. Learned counsel for the plaintiff-appellant has not been able to point out any evidence on the record to even remotely suggest that the plaintiff-appellant was the owner of the suit property.

9. In view thereof, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.01.2025

Aman Jain

NOTE:

Whether speaking/non-speaking: Speaking

Whether reportable: Yes/No

(ALKA SARIN)

JUDGE