

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****126****RSA-2802-2024 (O&M)****Date of decision: 10.02.2025****Surjit Kumar & Another****...Appellant(s)****Vs.****Balbir Chand****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. M.K. Singla, Advocate  
for the appellants.

Mr. S.K.S. Bedi, Advocate  
for the respondent.

\*\*\*

**NIDHI GUPTA, J.**

The defendants are in second appeal against the concurrent findings of the learned Courts below whereby the suit of the plaintiff/respondent herein, for possession of house in dispute on the basis of title; and for permanent injunction, has been decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants as "defendants" and the respondent as "plaintiff".

3. Brief facts of the case set out in the plaint are that the plaintiff is owner of the house in dispute (measuring 10.7 marlas i.e. 307 yards) on the basis of sale deed dated 14.02.2017 whereby defendant No.1 Surjit Kumar/ the then owner in possession of house in dispute, had sold the same to the plaintiff for a consideration of Rs.7,50,000/-. At the time



of execution of the sale deed, the defendant No.1 put the plaintiff into possession over the house in dispute and after taking possession of the house in dispute, the plaintiff locked the same as the plaintiff is resident of Chandigarh and taking benefit of absence of plaintiff and his family members, the defendants illegally and forcibly occupied the house of the plaintiff by breaking the locks. The plaintiff came to know about the said illegal occupation of his house by the defendants on 05.05.2017 when he visited at village Talania to see his house. The plaintiff also convened a panchayat of respectables on 08.05.2017 at 07:00 pm for getting vacation of the said house from the defendants, but the defendants instead of handing over the possession of the house in dispute to the plaintiff, abused the plaintiff with filthy language and threatened him with dire consequences. Thereafter, the plaintiff had also moved an application to SSP, Fatehgarh Sahib on 12.05.2017 against the defendants and FIR No.101 dated 31.07.2017 under Sections 447,448,506 IPC was registered against defendant No.1 and 3-4 unknown persons. Since then the plaintiff is requesting the defendants to hand over the possession of house in dispute, but they totally refused to accede the request of the plaintiff. Hence, the present suit.

4. Upon notice the defendants appeared and filed written statement resisting the suit taking various objections on merits and denying the averments in the plaint. The plaintiff filed replication denying



the pleas raised by the defendants in their written statement and reiterating his pleas as made in the plaint.

5. On the basis of pleadings of the parties, following issues were framed by the learned trial Court:-

*“(1) Whether the plaintiff is entitled to the relief of possession as prayed for? OPP*

*(2) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*

*(3) Whether the suit is not maintainable? OPD*

*(4) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*

*(5) Whether the plaintiff has not come to the court with clean hands and has suppressed true and material facts from the court?OPD*

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

*(6-A) Whether the suit of the plaintiff is properly valued for the purpose of Court fee and jurisdiction? OPP*

*(7) Relief.”*

6. On the basis of the pleadings, and the oral and documentary evidence adduced by the parties, the learned trial Court decided issues No.1 to 6 in favour of the plaintiff and against the defendants; and issue No.6A in favour of the defendants holding the plaintiff liable to pay ad valorem Court fee; and decreed the suit of the plaintiff vide judgment and decree dated 01.10.2022. The defendants' appeal against the said judgment and decree dated 01.10.2022 was



dismissed by the learned District Judge, Fatehgarh Sahib vide judgment and decree dated 12.08.2024. Hence, the present second appeal.

7. Learned counsel for the appellants-defendants submits that the plaintiff has based his entire claim on the Sale Deed dated 14.12.2017. Whereas the defendants have taken the specific stand the Sale Deed is without consideration and was only for security purpose. The defendants have proved on record that no sale consideration was ever paid to them by the plaintiff. In fact the plaintiff himself has admitted in his cross-examination that he has made no payment to the defendants. It is submitted that even PW2 attesting witness of the Sale Deed had also admitted in his evidence including in his affidavit (Ex.PW2/A), that no payment was made. Further, submits that plaintiff has stated that cash payment was made. However, in the month of November, 2016 demonetisation had taken place which continued up to March, 2017. Thus, statement of the plaintiff is utterly false. Furthermore, the appellant continues to be in possession of the suit property. Not only this, the defendants have also proved on record the Agreement to Sell dated 11.02.2017(Ex.D1/A) from which it is clear that the alleged Sale Deed is only for security purpose for sending the defendants abroad. It is further clearly mentioned in the said Sale Deed that if the defendants are not sent abroad then all documents executed between the parties including the Sale Deed etc. will be presumed to be cancelled.



8. Learned counsel further submits that learned Courts below have wrongly held that the defendants had failed to prove that the sale consideration was not received by them. It is contended that it is the plaintiffs who have relied upon the Sale Deed in question and hence it was their duty to prove the same in accordance with law including the passing of the sale consideration. Further the learned Courts below have committed serious illegality in not framing an issue regarding execution of Sale Deed. Lastly, the learned Courts below have misread and misconstrued the evidence in this regard which prima facie proves that no sale consideration had changed hands. Further, the impugned judgments and decrees passed by the learned Courts below are result of misreading, misconstruing and piecemeal reading of the evidence without considering the relevant facts and law. Learned counsel accordingly prays for setting aside of the impugned judgments and decrees.

9. No other argument is made on behalf of the defendants.

10. I have heard learned counsel for the defendants and perused the case file in great detail.

11. It is the case of the plaintiff that he is owner of the house in dispute as defendant No.1, being owner in possession of the suit property, had sold the same to the plaintiff vide registered Sale Deed dated 14.02.2017 for valuable sale consideration of Rs.7,50,000/-. At the time of execution of Sale Deed defendant No.1 had also put the plaintiff in



possession of the suit property. To the contrary, it is the case of the defendants that the said sale deed was executed purely for security purpose without any exchange of sale consideration, as the defendants wanted to go abroad. It is claimed that the defendants continue to be in possession. The learned trial Court vide judgment and decree dated 01.10.2022 had decreed the suit of the plaintiff on the finding that the Sale Deed dated 14.2.2017 has not been set aside till date and is a validly registered document which carries presumption of truth. As such, on the basis of the said Sale Deed, the plaintiff had valid title.

12. It is further very important to note that the defendant no.1 had filed a Civil Suit before the learned Civil Judge, Senior Division, Fatehgarh Sahib for declaration for cancellation of the Sale Deed dated 14.02.2017 executed by him in favour of the plaintiff. It is not denied by the defendants that the said suit was dismissed under Order 9 Rule 8 CPC vide order dated 21.01.2019 (Ex.P6). Even the application filed by the defendant No.1 for restoration of the said Civil Suit has been dismissed by the learned Additional Civil Judge, Senior Division, vide order dated 18.01.2025, a copy of which is handed over in the Court and is taken on record. Thus, Sale Deed in favour of plaintiff has not been cancelled till today. Therefore, it is a valid document. Accordingly, in view of the above facts, the learned 1st Appellate Court had upheld the judgement of the learned trial court. The relevant findings of the learned First Appellate



Court as contained in Para 28 of the impugned judgment and decree dated 12.08.2024 are as under:-

*“28. Therefore, in view of the discussion discussed above, it is not proved on the file that the sale consideration has not been received by Balbir Chand from Surjit Kumar. No benefit of the documents of the inquiries can be given to the appellant because the official in whose presence said documents were prepared was not examined. Mere examining a person who identified the signatures of the person in whose presence the document is prepared is not suffice. The plaintiff Balbir Chand is owner of the suit property and he is not in possession of the suit property. Therefore, he is entitled for the possession of the suit property. Therefore, this court is of the considered opinion that the findings of the learned trial court on all the issues are based upon correct appraisals of facts and evidence and are hereby affirmed.”*

13. Ld. Counsel for the appellant-defendant has shown nothing to this Court to controvert or dispute the above facts and findings.

In view of the above discussion, the present appeal is **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

**10.02.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**