

2025:PHHC:047988



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

**RSA-2832-2019 (O&M)**

**Reserved on : 24.03.2025**

**Pronounced on : 08.04.2025**

Om Prakash Gupta @ Pappu

....Appellant

VERSUS

Subhash Chand Gupta @ Subhash Chand Singla

....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sudhir Aggarwal, Advocate for the appellant.

**ALKA SARIN, J. (Oral)**

1. The present appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 25.09.2015 passed by the Trial Court and the judgment and decree dated 25.01.2019 passed by the First Appellate Court whereby the suit of the plaintiff-respondent for possession by way of mandatory injunction was partly decreed with costs.

2. Brief facts relevant to the present *lis* are that the parties are brothers. The plaintiff-respondent filed the suit for possession by way of mandatory injunction and recovery of mesne profits averring that he was the owner of the shop in dispute and about 6/7 months ago the defendant-appellant took possession of the shop in dispute for a period of two months while he was making arrangements for alternate premises. The plaintiff-respondent allowed the defendant-appellant to use the shop in dispute being his elder brother without any rent/consideration. However, after expiry of

the stipulated period the defendant-appellant did not vacate the shop in dispute despite issuance of notice dated 11.02.2011. In his reply to the notice the defendant-appellant flatly refused to vacate and hand over the possession of the shop in dispute and denied the title of the plaintiff-respondent and rather asserted himself to being the owner of the shop in dispute. Hence, the suit. In his written statement the defendant-appellant based his possession over the shop in dispute on a family settlement of 15.03.1994 executed between the parties whereby an earlier civil court decree dated 12.03.1981 was agreed to be cancelled. It was asserted that the plaintiff-respondent did not have any right over the shop in dispute after the family settlement written in the presence of the father of the parties whereunder the tenant (Dr. Kuldeep Aneja) was to handover possession to the defendant-appellant and infact when the said tenant vacated the shop in dispute in 1997 the defendant-appellant entered possession and started his business in the shop in dispute. In the replication the contents of the written statement were denied and those of the plaint were reiterated.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree for possession of the shop in dispute by way of mandatory injunction as prayed for ? OPP
2. Whether the plaintiff is entitled to recover Rs.70,000/- as amount of compensation/mesne profits for the period of 7 months prior to institution of the suit with 18% interest and further to the grant of monthly

compensation/mesne profits of Rs.10,000/- per month from the defendant as prayed for ? OPP

3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the plaintiff is estopped from filing the present suit by his own acts and conduct ? OPD

5. Whether the suit is not properly valued for purposes of court fee and jurisdiction ? OPD

6. Whether the plaintiff has no cause of action to file the present suit ? OPD

7. Whether the suit is barred by limitation ? OPD

8. Whether the plaintiff has suppressed the true and material facts and not come to the court with clean hands ? OPD

9. Relief.

4. The Trial Court vide judgment and decree dated 25.09.2015 partly decreed the suit of the plaintiff-respondent for possession but declined the relief of recovery of mesne profits. Aggrieved by the decision of the Trial Court, an appeal was preferred by the defendant-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 25.01.2019. Hence, the present regular second appeal by the defendant-appellant.

5. The learned counsel for the defendant-appellant has contended that both the Courts have erred in decreeing the suit of the plaintiff-respondent. It is urged that the defendant-appellant had become owner of the shop in dispute by virtue of the family settlement dated 15.03.1994 which

over-rode the earlier civil court decree dated 12.03.1981. It is contended that the plaintiff-respondent had no right over the shop in dispute and therefore the suit deserved to be dismissed.

6. Heard.

7. In the present case both the Courts have found that the plaintiff-respondent had become owner of the shop in dispute on the basis of a civil court decree dated 12.03.1981. By the said decree the parties were declared owners of different properties, and the plaintiff-respondent was declared owner of the shop in dispute. The family settlement of 15.03.1994 set-up by the defendant-appellant would be of no avail inasmuch as the original of the same was never produced in Court and nor was it registered. Further, a private document cannot nullify a decision by the Court as is being argued by learned counsel for the defendant-appellant. The civil court decree of 12.03.1981 holds good till date and has not been set aside or varied by any court of competent jurisdiction. As such, this Court has no hesitation in not placing reliance on the family settlement dated 15.03.1994 and accepting the civil court decree dated 12.03.1981.

8. In the present case there is no credible evidence available on the record which would prove the stand as taken by the defendant-appellant. Learned counsel for the defendant-appellant has failed to point out as to how the concurrent findings recorded by both the Courts are erroneous or perverse. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that the shop in dispute was under the ownership of the defendant-appellant. This Court finds no reason to differ from the findings returned by both the Courts.

9. No other point was argued.

10. In view of the discussion above, 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.

08.04.2025  
*Ankur*

( ALKA SARIN )  
JUDGE

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO