



RSA-1295-2025 (O&M)

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

**RSA-1295-2025(O&M)
Decided on : 24.04.2025**

Pawan Kumar

..... Appellant

Versus

Om Parkash Gupta (Since Deceased) through His LRs & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

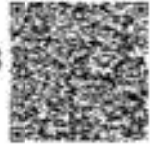
Present : Mr. Alok Mittal, Advocate and
Mr. Shubham Thakur, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's second appeal against the judgment and decree dated 03.04.2025 passed by the Court of learned Additional District Judge, Patiala, dismissing the appeal filed by the plaintiff against the judgment and decree dated 13.12.2017, passed by the Court of learned Additional Civil Judge (Senior Division), Patiala, vide which the suit for declaration and permanent injunction filed by the plaintiff was partly decreed.

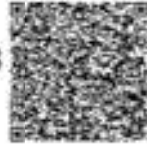
2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff Pawan Kumar filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over Shop No.3, Anaj Mandi, Devigarh (hereinafter referred to as 'the suit property'), from dispossessing him forcibly and illegally from the same and also



from alienating the same. A declaration was also sought that sale deed dated 24.05.2011 executed by defendant No.1 in favour of defendant No.3 with regard to the suit property was illegal, null and void, without consideration, executed during the pendency of the civil suit and was hit by the principles of lis pendence.

4. The plaintiff and defendant No.1 (Om Parkash Gupta, since deceased) were real brothers. Defendant No.2 (Sarwan Kumar) is the son of defendant No.1. Plaintiff and defendant No.1 were partners in a firm namely M/s Om Parkash Gupta, Commission Agents, Anaj Mandi, Devigarh since 1974-75. The said firm was dissolved in 1991 and on 31.03.1991, a new partnership deed was executed between defendant No.1, defendant No.2 and one Rani Devi. Subsequently, again new partnership deeds were executed. The case of the plaintiff was that he had been respecting defendant No.1 as his father and never objected to any of his decisions. However, defendants No.1 and 2 started misbehaving with him and also started misusing the goodwill of the firm. They took personal loans from various persons. It was averred that the suit property had been constructed out of joint Hindu family funds about 40-45 years back in the name of defendant No.1. There was a cash credit limit with Punjab & Sind Bank, Patiala and the property of the plaintiff was mortgaged with the bank. Since the amount was not paid by defendants No.1 and 2, the bank officials started trying to recover the amount from the plaintiff. The plaintiff, therefore, paid a sum of Rs.9,53,450/-. Certain other averments were also made and it was basically stated that since the suit property had been purchased out of joint Hindu family funds, the plaintiff was an equal owner. A sale deed dated 24.05.2011 was executed by defendant No.1 in favour of defendant No.3. It was averred that the said sale deed was not binding upon the rights of the plaintiff and the same was illegal, null and void.

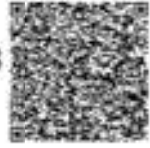


5. The suit was opposed by the defendants. The relationship between the parties was admitted. The previous firm having been dissolved and thereafter a new firm having been formed was admitted. It was averred that accounts was managed by the plaintiff and he started indulging in bungling. The factum of any loan having been taken was denied. On their request, the plaintiff stopped transacting in the firm M/s Om Parkash Gupta, Commission Agents. It was averred that the suit property was the self acquired property of Om Parkash and that the same had been purchased by Om Parkash and Sohan Lal from their own funds vide registered sale deeds dated 22.05.1978 and 25.05.1978. No joint Hindu family funds were available. It was averred that being the owner of the suit property, the sale deed dated 24.05.2011 was executed. A separate written statement was filed by defendants No.3 and 4 raising the plea of being bonafide purchasers.

6. In the replications, the averments made in the writtens statement were denied and those made in the plaint were reiterated.

7. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether plaintiff is entitled to relief of permanent injunction as prayed for ? OPP
2. Whether plaintiff is entitled to relief of declaration as prayed for ? OPP
3. Whether the suit of the plaintiff is false, frivolous and vexatious ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiff has concealed the true facts from the court, if so its effect ? OPD



6. Whether the suit of the plaintiff is hopelessly time barred ?
OPD
7. Whether the suit of the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
8. Relief.

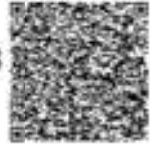
8. Parties led their respective evidence.

9. The trial Court partly decreed the suit filed by the plaintiff. The relief of declaration was declined. However, since the plaintiff was found to be in possession of the suit property, injunction was granted in his favour. The appeal filed against the said decision was dismissed, leading to the filing of the present regular second appeal.

10. I have heard learned counsel for the appellant.

11. Sh. Alok Mittal, learned counsel representing the appellant has strenuously urged that both the Courts erred in non-suiting the plaintiff despite the plaintiff having proved on record that the suit property had been purchased out of joint Hindu family funds. Learned counsel has referred to the oral and documentary evidence led on the record of the case. He has also referred to the judgments passed by both the Courts and has submitted that the same are not sustainable. On a query raised by the Court, learned counsel concedes that a suit for possession has already been filed against him and that his possession has been protected in the present proceedings by both the Courts. Learned counsel submits that since the plaintiff had been able to prove that the suit property had been purchased out of the joint Hindu family funds, the suit should have been decreed in toto.

12. I have considered the submissions made by learned counsel for the



appellant but find the same to be devoid of merit. In his cross-examination, the plaintiff admitted that he was not in possession of any document to show that he was the owner of the suit property or that the suit property had been purchased out of joint Hindu family funds. Except for the oral evidence, no documentary evidence was produced in this regard. He admitted that the suit property was in the name of defendant No.1 and after the sale deed dated 24.05.2011 having been executed, the same stands in the name of defendant No.3 Tej Kaur after mutation having been sanctioned in her name. Once the plaintiff was not able to prove that the suit property had been purchased out of joint Hindu family funds, it can be safely concluded that defendant No.1 was the absolute owner of the suit property and the same was his self acquired property. He was, therefore, duly competent to alienate the same. It has also come on record that a suit for possession already stands filed against the plaintiff and in any case both Courts protected his possession and have held that he would not be dispossessed forcibly.

13. I do not find any illegality, whatsoever, in the findings recorded by the Courts warranting interference in second appeal.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

24.04.2025

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No