

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-10-2020 (O&M)****Date of decision: 04.03.2025****Karam Singh****...Appellant(s)****Vs.****Ajmer Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. S.P.Soi, and Mr. Sahil Soi, Advocates  
for the appellant.

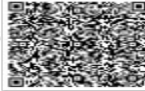
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**NIDHI GUPTA, J.**

The present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the appellant/plaintiff for declaration that the plaintiff is owner in exclusive possession of the suit house; and for mandatory injunction directing the defendant to remove his old articles; has been dismissed by both the Courts below.

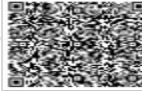
2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondent is the 'defendant'.

3. Brief facts of the case are that the plaintiff had filed the present suit claiming to be the owner in possession of the suit house. It was averred that the plaintiff had granted permission to the defendant who is brother of the plaintiff to store some articles like two iron petties, beds,



scooter etc. in one of the rooms of the suit house. Subsequently, the plaintiff had asked the defendant to remove his stored items as they were kept only with temporary permission. However, the defendant refused to comply with the said request of the plaintiff and failed to remove articles despite his repeated requests. Previously, a partition suit had been filed by the defendant claiming therein that the suit house was joint property. However the suit of the defendant was dismissed on 21.07.2010. Even the appeal filed by the defendant against the said judgment and decree dated 21.07.2010 was dismissed on 01.12.2011. Hence, the present suit has been filed by the plaintiff to the extent that he is the exclusive owner of the suit house.

4. Upon notice, defendant appeared and filed written statement resisting the suit on preliminary objections of maintainability, res-judicata and Section 10 CPC. On merits, defendant stated in his written statement that suit house was jointly owned and possessed by the plaintiff and defendant along with other co-sharers; suit house has not been partitioned and therefore, every co-sharer has a right to enjoy the same; all the co-sharers were residing in their respective portion since the time when their father was alive. It was submitted that as per the site plan attached by the plaintiff himself with the plaint, the defendant and other co-sharers are shown to be living in the suit house. Clearly therefore, it has been admitted by the plaintiff that other co-sharers were also in possession of the disputed portion. It was further stated that the suit house was ancestral property. Therefore, nobody can claim exclusive right upon the same; and that the



plaintiff wanted to grab the suit house to harass the defendant. Accordingly, prayer for dismissal of the suit has been made.

5. In replication, averments made in the plaint were reiterated and those made in the written statement were denied.

6. On the basis of the pleadings of the parties, following issues were framed vide order dated 23.04.2013:-

1. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP*
3. *Whether the suit is not maintainable?OPD*
4. *Whether the plaintiff has not come to the court with clean hands?OPD*
5. *Relief.*

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 2 in favour of the defendant and against the plaintiff; issues No.3 and 4 in favour of the plaintiff and against the defendant; and accordingly, vide judgment and decree dated 18.05.2015, the suit of the plaintiff was dismissed. The appeal filed by the plaintiff was dismissed with costs by the learned Additional District Judge, Chandigarh vide judgment and decree dated 15.02.2019 thereby affirming the findings of the learned trial Court on issues No. 1 and 2. Hence, the present second appeal.

8. Learned counsel for the appellant/plaintiff submits that the learned Courts below are in patent error in holding that plaintiff was not owner of the suit house. It is submitted that the said finding of the learned



Courts below is factually incorrect and has been given in ignorance of Ex.P1 which is the 'No Objection Certificate' dated 01.07.1991 issued by the Executive Officer, Notified Area Committee, Manimajra, the relevant para of which reads as under:-

*"2. It is further certified that the ownership of SCO/House No. 734 stands in the name of Sh. Karam Singh. And further endorsement of the said letter is No. NAC-90/9397.*

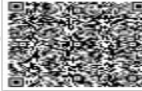
*Dated the: 1-7-91*

*A copy is forwarded to Sh. Karam Singh House No. 734 Mohalla Dera Sahib Manimajra.*

*Sd/-*

*Executive Officer NAC Manimajra."*

9. It is contended that from the above, it is clear that the plaintiff is declared to be owner of the suit house. Therefore, the judgments of the learned Courts below are based on conjectures and surmises and on misreading of the evidence on record. It is submitted that NOC has been issued in the name of the appellant as the same is issued only to the owner of the house and nobody else. Even NOC granted to the appellant with electricity connection further verifies that ownership of the suit house stood in the name of the appellant. It is argued that the said documentary evidence could not be discarded on the basis of the oral testimony of the defendant's witnesses. Further, the Learned Courts below have also failed to appreciate the other evidence on record in the form of Ex.P2 Water bills, Ex.P3 electricity bills, and receipts thereof Ex.P4 and Ex.P5 showing that the appellant is owner in possession of the suit house. Even the evidence of



DW2 Devinder Singh Clerk Sub Office Manimajra U.T. Chandigarh has been ignored, who has stated in his cross-examination that as per the record, ownership of the suit house stood in the name of plaintiff. It is submitted that the judgments and decrees of the learned Courts below are based on misreading of evidence on record. It is accordingly prayed that the present appeal be allowed.

10. No other argument is raised on behalf of the appellant/plaintiff.

11. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

12. Perusal of the record of the case shows that the plaintiff has taken contradictory and conflicting stands in respect of the suit house. The admitted fact is that the suit house was owned by Niranjn Singh/father of the plaintiff. Niranjn Singh had six sons. Therefore, upon his death, the suit house devolved upon the six sons in equal share by way of inheritance. Admittedly, Niranjn Singh was the only owner of the house and the other brothers of the plaintiff used to reside in the suit house with the plaintiff. It has also come on record that proceedings for transfer of the suit house in the name of all brothers were held vide letter (Ex.D1) before Assistant Commissioner, Municipal Corporation, Chandigarh upon which plaintiff has admitted his signatures.

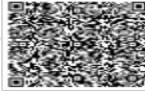
13. Initially, the pleaded case of the plaintiff was that the suit house was earlier owned by his grandfather, then by his father Niranjn Singh who had executed a Will in favour of the plaintiff. However



admittedly, no such Will was produced by the plaintiff; and plaintiff has admitted in his cross-examination that there was no Will was executed in his name by his father. In this regard, it is also relevant to note that previously the present defendant had filed a suit for permanent injunction against the plaintiff which was partly decreed in favour of the present defendant/plaintiff therein, on the ground that the Will relied upon by the present appellant was not proved i.e. The plaintiff could not prove his ownership over the suit house to the exclusion of the other brothers on the basis of the purported Will.

14. The plaintiff has claimed that his ownership over the suit house is proven from the NOC Ex. P-1 wherein he is reflected as owner of the suit house. I find no merit whatsoever in the said argument. First and foremost, NOC cannot confer title. In the absence of any Will in favour of the plaintiff, he cannot be declared owner of the suit house merely on the basis of NOC (Ex.P1). Further, admittedly, the said NOC is issued only for grant of electricity connection. As such, argument of the plaintiff that his ownership is proved from the NOC is entirely misconceived.

15. It has further been contended on behalf of the plaintiff that DW2 Devinder Singh (who is also PW2), Clerk, Sub Office Manimajra U.T. Chandigarh had proved that as per the record, ownership of the suit house stood in the name of the plaintiff. However, DW2 has admitted in his cross-examination that ownership of the suit house as reflected in letter dated 02.07.1991 (Ex.D7) bearing memo No.NAC-90/1425 issued from the office of Executive Officer, Notified Area Committee, Manimajra (U.T. Chandigarh),

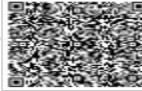


as per which ownership of the suit house No. 734 was changed in the name of Amar Singh and brother/sons of Niranjn Singh in view of the certified copy of Will dated 02.09.1984, in pursuance to the application (Ex.DW2/7) made by the plaintiff (available at page No. 259 of the LCR). It was found by the learned Courts below that as on date, the suit house stood in the name of Amar Singh and his brother/sons of Niranjn Singh as per the letter Ex.DW2/9; and only NOC of the suit house was in the name of the plaintiff regarding electricity connection.

16. Thus, except for the redoubtable NOC (Ex.P1), the plaintiff has produced no other document or evidence to show his ownership over the suit house. Even no evidence was led by the plaintiff in respect of his plea that the suit house was transferred in the name of the plaintiff as other properties were given to his brothers.

17. The relevant findings of the lower appellate Court as contained in the judgment and decree dated 15.02.2019, read as under:-

*“14. Admittedly, Niranjn Singh i.e. father of the parties had six sons. As discussed above, house in question was owned and possessed by Niranjn Singh and after his death, the same came to be devolved in equal share on his legal heirs. It is well settled proposition of law that succession never remains in abeyance. It opens on the death of a person and in that event, property owned and possessed by the said person goes to his heirs as per provisions of the Hindu Succession Act, 1955. Thus, what happened in the present case was that on demise of Niranjn Singh, the suit house devolved upon his sons and in that behalf, learned Appellate Court in the judgment & decree dated 27.07.2016 has observed that*

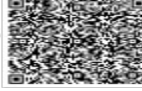


*defendant had share in the suit property along with other co-sharers and, therefore, his suit was decreed to the extent that he was entitled for share after partition of the suit property. Decree in the nature of permanent injunction was also passed restraining the plaintiff (defendant No.1 therein) from alienating the suit property to any other person except his share.*

15. *This judgment was challenged by the present plaintiff by filing RSA No. 4277 of 2016 and Hon'ble Punjab & Haryana High Court while considering document Ex.P1 held as under:-*

*"So far as the document Ex.D1 dated 01.07.1991 is concerned, the same was issued by the Executive Officer, Notified Area Committee, Manimajra, U.T., Chandigarh and was addressed to the Junior Engineer, Electricity Department, Manimajra though with a copy forwarded to the appellant-defendant No.1. This document relates to the No Objection Certificate for the purpose of electricity connection in Manimajra. In para No.2 of the said communication, it has been mentioned that the document dated 01.07.1991 certifies the ownership of House No.734 in the name of appellant-defendant No.1, but said document is not the conclusive evidence regarding ownership of the appellant-defendant No.1 regarding the suit property."*

16. *In view of the categorical finding returned by Hon'ble Punjab & Haryana High Court, nothing remains in the present litigation. On the basis of Ex.P1 alone, plaintiff cannot be held to be entitled to relief of declaration and mandatory injunction and, therefore, learned trial court committed no error much less illegality by dismissing the suit of the plaintiff. I, therefore, uphold the findings recorded on issues No.1*



*& 2 but reverse the findings recorded on issues No.3 & 4 as in view of contentions raised on issues No.1 & 2, it is not possible to say that issues No.3 & 4 were not pressed during course of arguments. In fact, in the face of determination on issues No.1 & 2, it has to be held that suit is not maintainable in its present form and that plaintiff has not come to the court with clean hands. Both these issues are, therefore, decided in favour of defendant. Consequently, impugned judgment & decree dated 18.05.2015 are upheld.”*

18. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.

19. Accordingly, present regular second appeal is hereby **dismissed.**

20. Pending applications, if any, stand disposed of.

**04.03.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

Whether speaking/reasoned: Yes/No  
Whether reportable: Yes/No