

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****253****RSA-2275-2022 (O&M)****Date of decision: 17.09.2025****Girdawar Singh****...Appellant(s)****Vs.****Kulwinder Kaur****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. A.S.Khinda, Advocate for the appellant.

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**NIDHI GUPTA, J.****CM-7900-C-2022**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 58 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of learned counsel for the applicant/appellant, the same is allowed and delay of 58 days in refiling the appeal is condoned.

**RSA-2275-2022 (O&M)**

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiff/respondent for permanent injunction, has been decreed by both the Courts below.



2. It is *inter alia* submitted by learned counsel for the appellant that the suit of the plaintiff could not have been decreed as the plaintiff had failed to establish her title. It is submitted that simple suit for permanent injunction is not maintainable because there is dispute of title of the parties of the property in question. As such, plaintiff ought to have filed suit for declaration. Moreover, the learned Courts below have relied upon inadmissible false document i.e. Mark B report made by the Police Officer. It is contended that the said report is totally inadmissible in evidence and has not even been proved in accordance with law. It is settled law that the criminal finding is not binding on the civil Court. It is further submitted that injunction in favour of the plaintiff could not in any event, be granted as the plaintiff had failed to prove her possession over the suit house. The plaintiff herself has admitted that she is not residing in the village Bhakhariana where the property is situated. Thus, possession of the plaintiff over the suit property was not proved as per her own evidence. It is well settled law that plaintiff has to prove her possession on the date of filing of the suit. However, in view of the above said fact, that possession of plaintiff was not admitted, suit could not have been decreed.

3. It is further submitted by learned counsel for the appellant that in the present case, respondent/plaintiff alleged that earlier Gian Singh, father of the plaintiff, was the owner in possession of the property in dispute and after his death, his legal heirs have become the owner of the property in dispute but the plaintiff has not proved on the record that



Gian Singh was the owner in possession of the property in dispute. No such document proved by the plaintiff which shows the possession on the property in dispute. Moreover, suit was filed by the plaintiff Kulwinder Kaur alone and no other legal heirs had come forward.

4. It is also submitted that the present suit was barred by res judicata under Order 2 Rule 2 CPC. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit whatsoever in the submissions made by learned counsel for the appellant.

6. Perusal of the record of the case shows that the plaintiff had filed a Suit for Permanent injunction restraining and prohibiting the defendants or anybody else acting on his behalf or her attorney from forcibly demolishing/damaging the existing construction in the property in dispute and/or further raising construction forcibly over the same as shown red in the site plan. It was the pleaded case of the plaintiff that she is owner in possession of suit property being legal heir of Gian Singh/original owner of suit property. Gian Singh had died, and he left behind one son, namely, Jaswinder Singh and two daughters, namely, Rajwinder Kaur and Kulwinder Kaur (present plaintiff). As such, plaintiff is in possession of suit property being legal heir. No partition had ever taken place between the legal heirs. There are 2 rooms existing in the property in question which are



in damaged condition. It was pleaded that the defendant is a forceful and resourceful person and had been threatening and bent upon to demolish the suit property. Plaintiff had requested the defendant to admit her claim, but he flatly refused. With these pleadings, present suit was filed on 04.10.2014.

7. On numerous Court queries, it has been admitted by learned counsel for the appellant that he is in possession of the suit property as the same is located adjacent to his house. Learned counsel for the appellant has admitted that he has no title or document to prove either his ownership or his possession over the said suit property. Even in his evidence, DW1 defendant had admitted in his cross-examination that disputed property is a house; and that he is not in possession of any document, title of the house in dispute. Needless to say, as it is the pleaded case of the defendant in his written statement that he is in possession of the suit property for the last so many years, it was upon the defendant to prove his possession. However, in view of the above noted admitted position, appellant was rightly held not entitled to injunction. It has also been admitted by the defendant that he is Sarpanch of village Bhakhariana.

8. On the other hand, the plaintiff witnesses Sewa Ram PW1 and Tarlochan Singh Lamberdar PW2, respectables of the village, had testified that the suit property falls in lal lakeer. So it does not have any khasra No.; and that the electricity connection of the property was in the name of Hardev Singh, who was brother of Gian Singh/father of the plaintiff. Gian Singh had died about 27-28 years ago; and plaintiff had been married since



past 20 years and residing in her matrimonial home. Son of Gian Singh had also died, and 2 daughters are surviving, one of whom is the plaintiff. Lamberdar PW2 has also testified that Gian Singh used to live in the suit house. Plaintiff was married in the year 1996 and that she used to occasionally come to village Bhakhariana. Plaintiff has stepped into witness box as PW3 and has proved her co-ownership of the property between her sister and successors of her brother, being successor of Gian Singh, who was owner in possession of suit property. Although it is admitted fact on record that the plaintiff had also failed to produce any document to show her ownership and/or possession, as the suit property falls within lal lakeer and, therefore, there are no khasra numbers to the same; yet, it is not disputed that electricity connection is in the name of her uncle i.e. Hardev Singh. In these circumstances, possession of the plaintiff over the suit property would be held to be proved. Defendant had also not filed any counter claim to the suit property. Accordingly, learned Trial Court had given the following findings:-

*“10. So, from the above discussion, this Court is of the opinion that the defendant has failed to prove his ownership and possession over the suit property and moreover he had not filed any counter claim to the property in dispute and further it has come on record that the suit property falls within the Lal Lakeer and the same belongs to Gian Singh, who is father of plaintiff and moreover, grand daughters of Gian Singh were having possession over the suit property to the extent of half share and the remaining half share were given to the two daughters of Gian Singh i.e. the present plaintiff and her sister.*



*Accordingly, the plaintiff has every right in her share in the suit property and thus she is entitled for the relief of injunction as prayed for. The issue No.1 is decided in favour of plaintiff and against the defendant.”*

9. No doubt, the oral evidence of the plaintiff was countered by the oral evidence of the defendant. However, what is to be considered in this situation is that evidence of plaintiff PW3 was supported by that of respectables of the village being PW1 Sewa Ram and PW2 Tarlochan Singh Lambardar. On the other hand, there was only the sole deposition of the defendant/DW1. Plaintiff had also proved Certificate Ex.P5, which was issued by the village Panchayat that the suit property was in possession of Gian Singh as owner; and after his death, the same has been inherited by his daughters and son Jaswant Singh. The defendant led no evidence to refute/rebut the evidence of the plaintiff. There is nothing whatsoever on record to show as to in what manner the defendant is claiming ownership over the suit property. On repeated Court queries, learned counsel for the appellant/defendant has only submitted that the suit property is situated adjacent to his house and, therefore, he is owner in possession of the same. Needless to say, merely because the suit property is situated adjacent to the house of the appellant, would not grant him any ownership rights over the same. In these circumstances, this Court is constrained to observe that there is every likelihood that in the absence of the plaintiff, who is residing in her matrimonial home, it would appear that the defendant is attempting to take over the suit property.



10. Even otherwise, the present second appeal is liable to be rejected as this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559***; has held as under: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

*"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."*

*15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."*

(Emphasis added)



11. The Hon'ble Supreme Court in the judgment of "**Mst. Sugani vs. Rameshwar Das and another**" **Law Finder Doc Id# 123580**, has gone on to further hold that "*the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers in second appeal*". Again, in **Avtar Singh Vs. Bimla Devi and others, 2021(4) RCR (Civil) 402** Hon'ble Apex Court has held that finding of fact cannot be interfered with in exercise of second Appellate jurisdiction.
12. In view of the above, I find no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.
13. The present Regular Second Appeal is hereby **dismissed**.
14. Pending applications, if any, stand disposed of.

**17.09.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

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