

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****222****RSA-3642-2012 (O&M)****Date of decision: 02.09.2025****Balbir Kaur****...Appellant(s)****Vs.****Sawarnjit Kaur and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. C.L.Sharma, Advocate for the appellant.

Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma (Moudgil), Advocate
for respondent No.1.

NIDHI GUPTA, J.

Present Regular Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellant for declaration that plaintiff is owner in possession of suit property by adverse possession; **and** suit for permanent injunction restraining the defendants from interfering in the suit property except in due course of law, has been dismissed by both the Courts below.

2. Plead case in the plaint was that the plaintiff had entered into an Agreement to Sell dated 06.08.1988 with the defendants regarding the suit property pursuant to which possession of the property was handed over to the plaintiff after obtaining entire sale consideration. However, the defendants did not come to the office of Sub Registrar for



registration of sale deed. It was pleaded that previously on 24.01.1981, defendant No.1 had entered into an Agreement to Sell of the same suit property with defendant No.2 and possession was given to defendant No.2. Plaintiff had purchased the possession from defendant No.2 right from 24.01.1981 and possession of the plaintiff has remained over the suit property for more than 12 years without any interference, hindrance or objection from the defendants. Plaintiff also paid the entire sale consideration to the defendants on 06.08.1988. However, now defendants No.1 and 2 had tried to take forcible possession of suit property from the plaintiff. Accordingly, plaintiff filed the present suit on 05.04.2006.

3. Despite notice, defendants had failed to appear and were therefore, proceeded against ex parte before the learned Civil Judge.

4. Upon appraisal of the ex parte evidence led by the plaintiff, learned Civil Judge (Junior Division), Jalandhar had dismissed the suit of the plaintiff vide judgment and decree dated 13.04.2010 primarily on the ground that the plaintiff had failed to prove the alleged Agreement dated 06.08.1988; that contradictory pleas had been taken in the plaint as, on the one hand, plaintiff was claiming ownership on the basis of adverse possession; and at the same time, she had admitted delivery of possession by way of the above Agreement. The appeal filed by the plaintiff was also dismissed by the Additional District Judge, Jalandhar vide judgment and decree dated 23.05.2012. Hence, present Second Appeal by the plaintiff.



5. Learned counsel for the plaintiff submits that relief of declaration as owner on the basis of adverse possession was not pressed by the plaintiff before the learned lower appellate Court. He submitted that accordingly, the appellant limits her suit for grant of decree of permanent injunction in view of her admitted possession over the suit property. In this regard, Id. counsel refers to the finding in para 4 of the judgment dated 23.05.2012 wherein the learned lower appellate Court has recorded that *"The entire amount was received through these agreements and possession was also delivered."* It is accordingly submitted that in view of the admitted fact that plaintiff was in possession of the suit property, relief of injunction could not have been denied to the plaintiff. It is accordingly submitted that the judgments of the lower Courts below suffer from material error and cannot be sustained.

6. *Per contra*, learned counsel for the defendant/respondent No.1 vehemently opposes submissions made on behalf of the plaintiff and submits that plaintiff had failed to prove the Agreement to Sell by way of preliminary evidence; and even no application was filed by her for proving the same by way of secondary evidence. As such, Agreement in question had remained unproven. Therefore, no right can accrue to the plaintiff. Accordingly, dismissal of the Second Appeal is prayed for.

7. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant/plaintiff.



8. To prove her ownership over the suit property, plaintiff has relied upon Agreement to Sell dated 06.08.1988 Ex.P1. However admittedly, said Agreement was not proven on record in terms of Section 64 of the Indian Evidence Act. The original Agreement was never produced by the plaintiff. Even no permission was sought to prove the same by way of secondary evidence. Moreover, the said Agreement was not registered. Admittedly, even no sale deed was registered in pursuance to the said Agreement. Admittedly, no suit for specific performance was filed by the plaintiff on the basis of alleged Agreement dated 6.8.1988. In view of the same, plaintiff has no right over the suit property.

9. Further, copy of Agreement dated 24.01.1981 allegedly executed between defendant No.1 and defendant No.2 had not been brought on record by the plaintiff. As such, plaintiff has been unable to prove even the title of her alleged vendor. Consequentially, ownership of the plaintiff over the suit property could not be proven.

10. In fact, a perusal of the pleadings of the plaint reveals that utterly vague averments have been made therein *in-as-much* as amount of sale consideration is not mentioned. Even target date is not mentioned. Even the date on which the defendants allegedly tried to take forcible possession of the suit property from the plaintiff, is not mentioned. Thus, vague averments are made which do not serve to prove case of the plaintiff.

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



12. The present Regular Second Appeal is accordingly, hereby **dismissed.**

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

02.09.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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