

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

CR No.1890 of 2015

Date of decision : 28.08.2015

Lakhvinder Singh

...Petitioner

Versus

Lakhwinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Anuj Baliyan, Advocate for the petitioner.

Mr. Nav Mohit Singh, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the order dated 12.12.2014, whereby the suit filed under Section 6 of the Specific Relief Act by the respondent-plaintiff has been decreed.

Mr. Anuj Baliyan, learned counsel appearing on behalf of petitioner-defendant namely Lakhvinder Singh s/o Saroop Singh submits that trial Court has committed illegality and perversity in decreeing the suit whereas it has not noticed the candid admission of the landlord/trust that tenancy was created in favour of petitioner-defendant No.2 & one Jangir Singh s/o Sohan Singh on 27.05.2008. In support of his contentions, he has

relied upon paragraph 4 of the preliminary objections taken in the written statement filed on behalf of defendant No.1. Same read thus:-

"4. That Mandeep Singh s/o Amar Singh filed an appeal against Civil Suit No.224/198 against answering defendant and Lakhwinder Singh s/o Nihal Singh, and the same was dismissed on 2.2.2010 in Civil appeal No.100/2008 decided on 2.2.2010 by the court of Sh. A.K. Shori, Ld. ADJ, Kaithal for non appearance of appellant Mandeep Singh. It is also pertinent to mention here that as the possession of disputed shop has already vacated by Mandeep Singh and present plaintiff. So, the appellant Mandeep Singh has not contested the appeal. The answering defendant has already given the shop in dispute on rent Lakhwinder Singh s/o Saroop Singh & Jangir Singh s/o Sohan Singh since 27.05.2008. The plaintiff has also got the knowledge regarding above facts since very beginning and now he has filed the present suit with his malafide intention."

He further submits that respondent-plaintiff has relied upon judgment and decree dated 01.05.2008 which was filed at the instance of one Mandeep Singh against Lakhwinder Singh s/o Bahadur Singh-plaintiff wherein it was found that they were in possession but the fact remains that they had surrendered the tenancy and new tenancy has been created in favour of petitioner & Jangir Singh. He further submits that impugned judgment and decree suffers from illegality and perversity.

Mr. Nav Mohit Singh, learned counsel appearing on behalf of respondent No.1 submits that decree dated 01.05.2008 reveals that respondent-plaintiff was in possession and there is no evidence on record that he surrendered the tenancy and thereafter tenancy had been created in

favour of defendant-Lakhvinder Singh. He further submits that against judgment and decree, appeal was filed and dismissed on 02.02.2010 and till that date no statement nor any evidence, much less, application has been come forth with regard to the issuance of first tenancy on 27.05.2008. There is no illegality and perversity in the judgment and no interference is warranted and this Court may not interfere with the well reasoned judgment and decree of the trial Court.

I have heard learned counsel for parties and appraised the paper book.

It is settled law that plaintiff has to stand on its own legs, Except by tendering into judgment and decree, no other documents have been tendered or proved in accordance with law, that respondent-plaintiff continue to remain in possession till filing of the suit. Rather on the other side, there is candid admission of the landlord Trust that tenancy was created in favour of petitioner-defendant No.2 and one Jangir Singh. The trial Court has failed to refer to the candid admission. The trial Court has rather in my view embarked to a path which was not warranted for the reasons that it formed an opinion that during the pendency of the appeal, no such fact of creating of any tenancy on 27.05.2008 has been brought to the notice and, therefore, the respondent-plaintiff continued to remain in possession in view of judgment and decree dated 01.05.2008. Such findings in my view is totally fallacious, as already noticed above. The trial Court has not only misread but not even noticed the candid admission of the landlort Trust.

In view of what has been observed above, impugned judgment

and decree is hereby set aside.

Accordingly, suit filed under Section 6 of Specific Relief Act,
is hereby dismissed.

CR is allowed.

28.08.2015

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(AMIT RAWAL)
JUDGE