

IN THE HIGH COURT OF PUNJAB AND HARYANA,
CHANDIGARH

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RSA -1948-2013 (O&M)
DATE OF DECISION:08.12.2015

DARBARA SINGH & ANR.

....Appellant

VS.

HARCHAND SINGH & ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Nagra, Advocate
for the appellants.

Mr. Surinder Sharma, Advocate
for respondents.

AMIT RAWAL, J. (ORAL)

Appellant-plaintiff is in regular second appeal against the concurrent findings of facts whereby the suit for permanent injunction seeking restraint order against the defendants not to interfere in the peaceful possession except in due course of law has been dismissed.

Learned counsel appearing on behalf of the appellants-plaintiffs submits that as per the jamabandi P1 to P15, the Courts below found that the appellants-plaintiffs have been found to be in possession of the property and defendants as owners. Defendants have purchased the property vide sale deed dated 05.03.09 which reflected a symbolic possession. No steps have been taken to take the possession in accordance with law, he, further submits that appellant-plaintiff is entitled to protect the possession and has

erroneously been non-suited on the ground that no injunction can be granted against the true owner and thus the following substantial question of law arises:-

i) Whether a person who is found to be in long peaceful possession can be dispossessed except in due course of law or not?

Mr. Surinder Sharma, learned counsel appearing on behalf of the respondents-defendants submits that concurrent findings of fact rendered in favour of the defendants cannot be interfered under Section 100 CPC and thus no substantial question of law arises, much less, the defendants are the owners of the property and rightly so the plaintiffs have been non-suited as no injunction can be granted against the true owner.

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

It is a settled law that a person cannot be dispossessed except in due course of law. A person who is in long and settled possession cannot be dispossessed except in due course of law as held by Hon'ble Supreme Court in Rame Gowda (D) by LR's v/s M. Varadappa Naidu (D) by LR's. & Anr. 2004 Volume 1 SCC Page 769. The jamabandi Ex.P1 to P15 reveals that the possession is of nobody else but of the plaintiffs, though as, in cultivating possession. The injunction which has been sought is that the plaintiff should not be dispossessed except in due course of law. The defendant shall be at liberty to take possession in accordance with law. Since the appellant -plaintiff have been found to be long peaceful possession and I am of the view that judgment and decree of the Courts below are not tenable and thus liable to be set aside and accordingly set aside.

In essence, the aforementioned question of law as noticed

above is answered in favour of the appellants-plaintiffs and against the respondents-defendants. However, the injunction will not debar the defendants from seeking the possession in accordance with law.

In view of what has been noticed above, the appeal is allowed. The suit filed by the appellants-plaintiffs is accordingly decreed. Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

December 08, 2015.
SwarnjitS