

RSA No. 1516 of 2015 (O&M)

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

RSA No. 1516 of 2015 (O&M)

Date of Decision: December 07, 2015

Varsha

...Appellant

Versus

Veena Arora and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Bikramjit Aroura, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.4219-C of 2015

Application is allowed, subject to all just exceptions.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Amritsar, dated 11.07.2013, whereby, the suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the house, details of which have been mentioned in the heading of the suit, measuring 114 square yards situated at Chak Tung Bala, sub-urban Abadi, Dashmesh Nagar, Tehsil and District Amritsar, stands dismissed primarily on the ground that despite the witnesses on her behalf having appeared in the Court and were examined in chief, failed to appear for cross-examination, the result whereof was that

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there was no evidence to support the assertions made in the plaint and the appeal preferred against the said judgment and decree has been dismissed by the Additional District Judge, Amritsar, on 26.11.2014.

It is the contention of the learned counsel for the appellant that the Courts below have not taken into consideration the fact that on two occasions, the witnesses who had appeared initially for examination-in-chief, were present i.e. on 02.03.2012 and 02.03.2013 but their cross-examination was deferred on the request of counsel for defendant No.3 who was the contesting defendant, for which the appellant-plaintiff cannot be held responsible. He, thus, contends that the order closing the evidence of the plaintiff dated 24.04.2013 cannot sustain. His further contention is that the suit should have been decided under Order 17 Rule 3 of CPC on the closing of the evidence of the plaintiff when it was apparent that there was no evidence brought on record, whereas, the Court proceeded to fix a date for evidence of the defendants and the defendants have not produced any evidence. Their evidence has also been closed vide order dated 10.07.2013 and therefore, the Court has not proceeded in accordance with law while deciding the case of the appellant-plaintiff. He, accordingly, prays that the judgments and decree passed by the Courts below may be set aside and one opportunity may be given to the appellant-plaintiff to lead her evidence.

I have considered the submissions made by the learned counsel for the appellant but am unable to accept the same. The details with regard to the proceedings which had taken place before the trial Court has been mentioned in para 4 of the judgment passed by the lower Appellate Court which reads as follows:-

“4. The defendants No.1 and 2 were proceeded against exparte. Thereafter issues were framed on 3.3.2011 and the matter was fixed for 19.7.2011 for plaintiff evidence when no plaintiff evidence was present and the matter was adjourned to 14.10.2011 for entire plaintiff evidence at own responsibility. Thereafter, plaintiff witnesses were examined-in-chief and cross-examination was deferred for 23.12.2011. No plaintiff evidence was present on that date. Cost was imposed and matter was adjourned to 2.3.2012 for cross-examination. On 2.3.2012, plaintiff witnesses were present but again they were not cross-examined and again the matter was adjourned to 5.4.2012. When the case was transferred on 5.4.2012, no plaintiff witnesses were present and the matter was adjourned to 18.5.2012. On 18.5.2012, again no plaintiff witness was present and the matter was adjourned to 9.6.2012. On 9.6.2012 the Presiding Officer had relinquished the charge and the matter was adjourned to 21.8.2012. No plaintiff witnesses were present and the same was adjourned to 5.10.2012. Again no plaintiff evidence was present. Cost of Rs.500/- was imposed and matter was adjourned to 4.2.2013 as last opportunity. Again on 4.2.2013 no

plaintiff evidence was present. The last opportunity was extended upto 2.3.2013. On 2.3.2013, three plaintiff witnesses were present but they could not be cross-examined and the matter was adjourned to 11.4.2013. Again on 11.4.2013, no witnesses were present on behalf of the plaintiff. Last opportunity was extended to 24.4.2013. No plaintiff witness was present and hence the evidence was closed by order and matter was taken up for 3.5.2013 for defence evidence. The defence evidence was closed vide order dated 10.7.2013 where learned counsel for defendant No.3 has stated that he does not intend to examine any evidence hence the matter was taken up on 11.7.2013 when the suit of the plaintiff has been finally decided and was dismissed vide judgment and decree dated 11.7.2013.”

A perusal of the above would show that it is correct that on two occasions i.e. on 02.03.2012 and 02.03.2013, plaintiff's witnesses were present for cross-examination and the hearing of the case was deferred but comparing it with the opportunities which have been granted to the appellant-plaintiff to produce her witnesses would show that various effective opportunities have been granted to her to produce her witnesses. The order dated 24.04.2013 passed by the trial Court cannot be said to be without any justification or unreasonable.

The contention of the learned counsel for the appellant that the trial Court has committed an error in not deciding the suit

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under Order 17 Rule 3 of CPC when the case was fixed for evidence of the defendants on closer of the evidence of the appellant-plaintiff, suffice it to say that no prejudice has been caused to the appellant-plaintiff by the process resorted to by the trial Court. This grievance, if any, could have been that of the respondent-defendants. The conclusions, thus, drawn by the Courts below cannot be said to be not in accordance with law.

Both the Courts below have returned concurrent findings which do not call for any interference of this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

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In view of the order passed in the main appeal, the present application for restraining the respondents from interfering into the peaceful possession of the appellant over the house in question during the pendency of the appeal, has become infructuous.

Disposed of as such.

December 07, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**