

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CM No. 4761-C of 2015 in/and
RSA No. 1751 of 2015
Date of Decision : 15.10.2015**

Mahender Singh

....Appellant

Versus

Khushwaqt Dharamshala Trust (Regd.) Rewari & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ajay Jain, Advocate
for the applicant-appellant.

SURINDER GUPTA, J.

CM No. 4761-C of 2015

This is an application filed by Mahender Singh son of Shadi Ram seeking permission to file appeal against the judgment and decree dated 09.01.2015 passed by the District Judge, Rewari whereby suit of the plaintiff-trust was decreed for possession of the shop which is part of property bearing House Tax No. 6987-88, situated at Mohalla Nalapura Balluwara, Rewari. Applying the principle of *lis pendens* it was ordered that judgment shall be binding not only on defendants in the suit but also on any person who might have come in possession of the shop during pendency of the suit.

2. The applicant (appellant) is brother of Indraj (defendant no. 3) in the suit. It has been alleged that applicant is in possession of the shop as tenant under the landlord Ramesh Chand Bhargav and the judgment has been passed by the Ist Appellate Court in the absence of applicant. The judgment and decree passed by the Ist Appellate Court shall adversely affect the right of the applicant who is in actual physical possession of the disputed shop.

3. I have heard learned counsel for the applicant, perused the paper-book and also the lower Court record with his assistance.

4. Order XLI Rule 20 of Code of Civil Procedure (CPC) reads, as follows:-

“20. Power to adjourn hearing and direct persons appearing interested to be made respondents—

(1) Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.”

5. The applicant claims to be in possession of the suit property as tenant under one Ramesh Chand Bhargav, who is not a party to the suit and there is a categorical finding of the Ist Appellate Court that defendants no. 1 and 2 Rinkesh @ Rinku Mehandiratta and Narain Dass surrendered possession of the shop in dispute during pendency of the case in favour of Indraj.

6. As regard, Ramesh Chand Bhargav, it was observed that the shop in dispute is owned by the plaintiff-trust and Ramesh

Chand Bhargav has no legal capacity or concern with the trust and to put anybody in possession of the shop owned by the trust.

7. Perusal of the lower Court record shows that earlier sons of Ramesh Chand Bhargav, namely; Rahul Bhargav and Rajul Bhargav filed Civil Suit No. 43 of 2006 seeking account of plaintiff-trust and for removal of the trustees and to appoint them as new trustees. They were not allowed leave of Court to institute suit against the plaintiff-trust and the trustees and their application was declined vide order dated 16.01.2009 passed by Additional District Judge, Rewari which was placed on file of the lower Court as Ex. PA. Ramesh Chand Bhargav was not impleaded as one of the trustee of plaintiff-trust in that suit. Reference to the order (Ex. PA) has been made only for the purpose that Ramesh Chand Bhargav has no concern with the plaintiff-trust or its property and this fact was within the knowledge of sons of Ramesh Chand Bhargav. The applicant was not a party to the suit filed by the trust or even in the appeal. It is nowhere the case of applicant that he was inducted as tenant in the shop in dispute by the trust or any of the trustee. The Ist Appellate Court has made reference towards a rent note dated 02.09.2009 alleged in favour of applicant. Defendant no. 1-Rinkesh @ Rinku Mehendiratta had relinquished possession of the shop in favour of Ramesh Chand Bhargav on 05.10.2009, as such, this document could not be executed on 02.09.2009. Secondly, the stamp-paper on which this document was prepared was purchased on 16.09.2009. This indicates the connivance of defendants. Even if it be believed that applicant has entered into possession during pendency of the suit, the principle of *lis pendens* applies on him.

There appears to be an intent of defendants to hoodwink the plaintiff-trust in order to deprive it of its property.

8. In view of my above discussion, the application filed by the applicant is without merit and the same is declined.

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As the application to file the appeal has not been allowed, the instant appeal has been rendered infructuous and the same is dismissed as such.

October 15, 2015
jk

(SURINDER GUPTA)
JUDGE