

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

**RSA NO. 312 OF 2015 (O&M)
DECIDED ON : 07.04.2015**

Bharat Bhushan

...Appellant

versus

Balbir Krishan and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. R. S. Chauhan, Advocate.

K. C. PURI, J. (ORAL)

CM NO. 821-C OF 2015

The application stands allowed and the document Annuevre P-5 is taken on record, subject to all just exceptions and for the purpose of deciding the present appeal only.

MAIN CASE

Defendant/appellant Bharat Bhushan has challenged the judgment and decree dated 30.07.2014 passed by Shri Balwinder Singh Sandhu, District Judge, Pathankot, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 09.12.2011 passed by Shri Gurmeet Tiwana, Civil Judge (Junior Division), Pathankot, was dismissed.

Briefly stated, Balbir Krishan, Raja Ram, Mulakh Raj and Rajesh Prashar sons of Munshi Ram have filed a suit for

possession in respect of the property as mentioned in the head note of the plaint.

Brief facts of the case as enumerated from the record are that the plaintiffs now respondents are the owners of the shop and godown in equal shares having inherited the same from their father. The defendant/appellant was inducted as tenant but the defendant/appellant did not pay the rent from 01.04.1989. The plaintiffs filed suit for ejectment after serving notice under Section 106 of Transfer of Property Act. In that suit the defendant/appellant denied the title of plaintiffs and also denied the relationship of tenant and landlord. The said suit was dismissed on 21.04.1993 holding that the relationship of landlord and tenant was not established. It was further held that the plaintiffs were advised to file a separate suit for possession of property. The defendant/appellant had denied the title as well as relationship of landlord and tenant and hence, the suit for possession was filed.

Upon put to notice, defendant/appellant filed written statement taking preliminary objections that the suit is not valued and the site plan is incorrect. It was further pleaded that plaintiffs now respondents have preferred appeal which is still pending. It was further submitted that defendant was never inducted as tenant. The other averments were denied.

Replication was filed wherein all the averments mentioned in the written statement were denied and those

mentioned in the plaint were reiterated.

From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiffs were entitled to possession of the suit property ? OPP
- 2) Whether there has been previous litigations between the parties over the suit property and to its effect? OPD
- 3) Whether the suit is incorrectly valued for the purpose of court fee and jurisdiction ? OPD
- 4) Whether the site plan attached with the plaint is incorrect if so its effect ? OPD
- 5) Whether the suit is liable to be stayed u/s 10 CPC ? OPD
- 6) Whether the suit is time barred ? OPD
- 7) Relief.

In order to prove their case, the plaintiffs examined Manmohan Singh as PW-1, Brahm Dass as PW-2, Jai Kishan Bhati as PW-3, Kuldip Raj as PW-4, Raja Ram as PW-5 and closed the evidence after tendering certain documents.

On the other hand, the defendant himself stepped into the witness box as DW-1 and closed the evidence.

The learned trial court, after appreciating the evidence available on record, returned the findings on all the issues in favour of the plaintiffs and consequently, decreed the suit of the plaintiffs vide judgment and decree dated 03.09.2005.

The defendant filed appeal against the said judgment and decree dated 03.09.2005 and the case was remanded back vide judgment and decree dated 14.10.2009. Ultimately, the suit of the plaintiffs was decreed with costs vide judgment and decree dated 04.12.2011.

Feeling dissatisfied with the above said judgment and decree dated 09.12.2011 passed by Civil Judge (Junior Division), Pathankot, the defendant/appellant preferred first appeal. The said appeal was dismissed vide judgment and decree dated 30.07.2014 passed by District Judge, Pathankot.

Still feeling aggrieved with the judgment and decree dated 09.12.2011 passed by Civil Judge (Junior Division), Pathankot and judgment and decree dated 30.07.2014 passed by District Judge, Pathankot, the defendant/appellant has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no.6 of the grounds of appeal has mentioned that following questions of law have arisen in the present appeal :-

- 1) Whether judgment and decree passed by the courts below whereby both the courts below have misread the evidence available on record can be sustained in the eyes of law ?

- 2) Whether any finding recorded in an ejectment suit would operate resjudicata and on that account whether the present suit for possession was maintainable ?
- 3) Whether the plaintiff can held to be an owner and entitled to seek possession when no declaratory decree was passed in favour of the plaintiff/respondent declaring them as an owner and thus whether the present suit was maintainable ?

Learned counsel for the appellant has submitted that plaintiffs earlier filed a suit for ejectment claiming the defendant/appellant as tenant. The said suit was dismissed and the observation was made therein that the plaintiffs can file a suit for possession. It is further submitted that both the courts below have misread the evidence available on record. The findings of ejectment suit will operate as resjudicata and as such, the present suit is not maintainable,. It is further submitted that the plaintiffs have not filed the suit for declaration and mere suit for possession is not maintainable.

I have considered the submissions made by learned counsel for the appellant and have gone through the records of the case.

There is nothing on file to show that both the courts below have misread the evidence available on file. The suit for

ejectment filed by the plaintiffs was dismissed on the ground that the present plaintiffs now respondents have failed to prove the tenancy. The defendant/appellant has taken the plea of adverse possession which has not been proved by them. Both the courts below have given a definite finding that the defendant/ appellant has failed to prove the adverse possession over the suit property. The report of demarcation proved the fact that it consisted of khasra numbers owned by the plaintiff. During the course of argument, learned counsel for the appellant has read the statement of defendant in which also, he has admitted that on both the sides of the shop in question, there are shops owned by the plaintiff. The previous observation does not operate as resjudicata as that was simply a suit for possession by way of ejectment. In that suit itself, it has been mentioned that the plaintiffs/respondents are at liberty to file the suit for possession and the plaintiffs have filed as suit for possession thereafter. The owner can maintain the suit for possession but it cannot be said that mere suit for possession is not maintainable. The plaintiff has claimed ownership and in defence, the defendant/appellant has taken the plea of adverse possession which remains unproved before both the courts below. On the facts of the present case, the finding of both the courts below that defendant/appellant has failed to prove his adverse possession, remains unchallenged in view of Section 100 CPC. The finding of fact cannot be challenged in the regular second appeal unless the

same is perverse or result due to misreading the evidence. So, no question of law much less substantial question of law has arisen in the present appeal.

The defendant/appellant has been able to linger on his possession for more than 22 years. The previous suit was filed by the plaintiffs in the year 1993. The owner has the right to enjoy the property. The defendant has not been recorded owner anywhere in respect of the suit property and as such, mere suit for declaration has not been filed is not a ground to discard the case of the plaintiffs.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.

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The application for staying the operation of judgment and decree also stands dismissed along with all other applications, if any.

APRIL 07, 2015
shalini

(K. C. PURI)
JUDGE