

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

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Regular Second Appeal No.3196 of 2015 (O&M)
Date of Decision: October 14, 2015

Parmod Chander

...Appellant

Versus

Vijay Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anupam Bhardwaj, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.7712-C of 2015

Prayer in this application is for condonation of delay of 18 days
in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the applicant-appellant, the present application
is allowed.

Delay of 18 days in filing the appeal stands condoned.

RSA No.3196 of 2015

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division), Jalandhar, dated 09.05.2013, by which
the suit for permanent injunction restraining the defendants and all their
agents from interfering into the peaceful and legal possession of the
appellant-plaintiff and from dispossessing him forcibly and illegally in any
manner whatsoever from the shop in dispute, details of the same and
location have been given in the head note, situated at Dhobi Mohalla,

Model Town Road, Jalandhar, has been dismissed and the appeal preferred by the appellant-plaintiff against the said judgment and decree also stands dismissed by the Additional District Judge, Jalandhar, on 12.03.2015.

2. It is the contention of learned counsel for the appellant-plaintiff that the shop in dispute is an ancestral property, which was owned by the father of the parties late Shri Munshi Ram. All the three brothers inherited the said property. A compromise/settlement dated 25.07.2004 was executed between the appellant-plaintiff and the respondents-defendants, on the basis of which the appellant-plaintiff became the owner of the said shop. Initially, the shop was given on rent to one Shri Dharampal Chadha, who died and his wife Asha Rani continued to be the tenant, against whom the appellant-plaintiff filed a petition for eviction, which during its pendency was compromised and the possession was handed over to the appellant-plaintiff and thus the same was withdrawn. Now, he has started a footwear shop and is running the same. He contends that since he is in possession of the said shop and the respondents-defendants are interfering in his possession, the injunction as prayed for, should have been granted by the Courts below. He, thus, contends that the findings recorded by the Courts below cannot be sustained and deserve to be set aside.

3. This contention of the learned counsel for the appellant-plaintiff cannot be accepted in the light of the fact that the very basis, on which the appellant-plaintiff is claiming ownership of the property, is a written compromise/settlement dated 25.07.2004 Exhibit P-2, which he has not been able to prove before the trial Court. The witness, he produced to prove this document, namely Satish Trikha PW-1, in his cross-examination stated that he was not aware of any compromise/settlement dated

25.07.2004 Exhibit P-2. He had further admitted that neither compromise Exhibit P-2 was executed nor any property has been partitioned in his presence. In the absence of any compromise being in existence, the assertion of the appellant-plaintiff about his ownership, itself is under cloud. It may be added here that if the other two brothers are the co-sharers of the property, separate suit for injunction is not maintainable, as has been rightly held by the Courts below.

4. On the other hand, the respondents-defendants have asserted themselves to be in possession of the property and have further stated that they have filed an ejectment petition against Satwant Singh with regard to the property in dispute, to whom the same was rented out, in which the appellant-plaintiff moved an application under Order I Rule 10 CPC for being impleaded as a party. The said application was dismissed and the appeal preferred by him has also been dismissed. The ejectment petition was ultimately allowed by the Court. That apart, it is an admitted position that the partition proceedings have been initiated by the respondents-defendants, where the first Court has dismissed the said partition proceedings, however, the appeal is pending. The parties having availed of their legal remedy, thus, has rightly been held to be a case where the injunction, as prayed for, by the appellant-plaintiff, cannot be granted.

5. Both the Courts below have returned concurrent findings in detail after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.7713-C of 2015 stands disposed of as infructuous.

October 14, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**