

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

RSA No.3554 of 2015 (O&M)

Date of decision : 04.12.2015

Om Parkash

...Appellant

Versus

Smt. Shanti and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. N.K. Malhotra, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

CM No.8627-C of 2015

Prayer in the application is for condonation of delay of 97 days in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 97 days in refiling the appeal is condoned.

Application is allowed.

CM No.8629-C of 2015

Prayer in the application is for condonation of delay of 10 days in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 10 days in filing the appeal is condoned.

Application is allowed.

Main Case

The appellant-plaintiff had sought declaration and permanent injunction. However, the trial Court dismissed the suit seeking declaration of rights of the occupancy in the suit land measuring 16 kanals situated in the revenue estate of Village Baniani, Sub Tehsil Kalanaur, Tehsil and District Rohtak, in essence, had made plaintiff an absolute owner and restrained the defendants from permanently alienating the suit land, much less, property. The lower Appellate Court affirmed the findings vis-a-vis the declaration but however, granted the injunction that he shall not be dispossessed except in due course of law.

Mr. Malhotra, learned counsel appearing on behalf of appellant, submits that lower Appellate Court had though partly allowed the appeal by granting the injunction, ought to have granted declaration as the appellant-plaintiff had been found to be in possession and, therefore, as per the occupancy rights, entitled to declaration of ownership in view of Punjab Security Of Land Tenures Act 1953.

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

No doubt that documents produced on record shows that appellant-plaintiff had been in cultivating possession of the property but failed to prove the long and uninterrupted occupancy, much less, conformed to the provision of the aforementioned Act declaring the occupancy rights.

The Lower Appellate Court in paragraph 26 observed as under:-

“26. If we took a look on copy of order dated 21.9.1992 Exhibit D17 which was passed by the Assistant Collector 1st Grade Rohtak, it transpires that Sada Ram had given an application in Form-L under Section 14(A) (1) of the Punjab Security of Land Tenure Act, 1953 under Rule 22 and in the said application for ejectment which was given against Om Parkash respondent, it had been stated by Sada Ram that Sada Ram owned land khasra No.101/7, 8 total measuring 16 kanals which was being cultivated by respondent Om Parkash on 'Batai'-'Tihai' but the 'Batai'-'Tihai' had not been given from Kharif 1989 to Kharif 1991 amounting to Rs.3809.50 paise. Thus, on the application of Sada Ram, respondent Om Parkash was ordered to be ejected vide order dated 21.9.1992.”

In view of the aforementioned fact, lower Appellate Court found that ejectment application was filed which admitted the factum of tenancy and, therefore, the possession was found to be intact but not the right of the ownership as per Section 5 (1) (a) read with Section 5 (2) (a) & Section 8 of Punjab Tenancy Act, 1887.

Keeping in view the aforementioned fact, I do not intend to differ with the findings rendered by the lower Appellate Court, much less, no substantial question of law arises for determination.

Accordingly, appeal is dismissed.

04.12.2015

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**(AMIT RAWAL)
JUDGE**