

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1650 of 2014 (O/M)
Date of decision : 10.12.2015

Lila and another

..... Appellants

Versus

Rajo Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rajinder Goyal, Advocate, for the appellants.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 13.12.2013, passed by the Additional District Judge, Kaithal, affirming the judgment and decree dated 20.1.2012, passed by the learned Civil Judge (Junior Division), Kaithal, vide which the suit of the plaintiffs (respondents herein) for possession was decreed and the defendants (appellants herein) were directed to vacate the suit land, detailed in the paragraph No. 1 of the plaint and hand over the vacant possession of the suit land to the plaintiffs/respondents within one month of the order, failing which

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the plaintiffs/respondents will be at liberty to get the possession by way of execution.

Suffice to say that the plaintiffs/respondents had filed the suit claiming that they are owners of the suit land and the defendants/appellants are in unauthorized possession. The defendants/appellants, on the other hand, contested the suit on the ground that they are in adverse possession of the suit land.

It also comes out that earlier the plaintiffs/respondents had filed a suit for permanent injunction against the defendants/appellants in the Court of the learned Civil Judge (Junior Division), Kaithal, in which status quo order was passed. However, during the pendency of that suit, the present suit for possession was filed, claiming that during the pendency of the previous suit, they have been dis-possessed.

The defendants/appellants also took the plea that the suit is barred under Order 2 Rule 2 and under Order 23 Rule 1 of Code of Civil Procedure, 1908 (in short 'CPC').

The lower appellate Court affirmed the finding that the plaintiffs/respondents are proved to be owners of the suit land. The adverse possession of the defendants/appellants is not proved. Regarding the plea of suit being barred under Order 2 Rule 2 CPC, it was held that the present suit was filed during the pendency of the previous suit. Therefore, there is no question of filing the suit after

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obtaining the permission to file a fresh one. It was held that the present suit for possession is based on different cause of action. Therefore, it is not barred under Order 2 Rule 2 CPC. The first appellate Court also took the view that the suit is not barred under Order 2 Rule 2 and Order 23 Rule 1 CPC.

I have heard the learned counsel for the appellants and have also carefully gone through the file.

Before this Court, the main contention of the learned counsel for the defendants/appellants is that the present suit is barred under Order 2 Rule 2 CPC and also barred under Order 23 Rule 1 CPC. It is contended that as per the demarcation report, discussed by the lower Court, when the demarcation was conducted by the Patwari, the old construction was found at the spot, which shows that the possession of the defendants/appellants was there before the filing of the suit for permanent injunction. When the suit for permanent injunction was filed, the relief of possession is deemed to have been given up.

I am of the view that in this case, it is proved that the plaintiffs/respondents are owners of the suit land and they are entitled to possession.

Now, the question would arise whether the suit can be dismissed on the technical plea of being barred under Order 2 Rule 2 CPC or under Order 23 Rule 1 CPC ?

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It is not a denying fact that previously, the plaintiffs/respondents had filed a suit for permanent injunction, wherein status quo order was passed by the lower Court. During the pendency of that suit, demarcation was conducted by the Patwari, who was examined as PW1, who made the report that there is old construction of the defendants/appellants. The flour mill run by the defendants/appellants was also existing there since 1994.

I am of the view that when the plaintiffs/respondents came to know from demarcation report that the construction fell within the disputed land, they filed a suit for possession and later on withdrew the suit for permanent injunction. When the suit is based on fresh cause of action, the objection of suit being barred under Order 2 Rule 2 or under Order 23 Rule 1 CPC will not be attracted. The suit for title cannot be allowed to be defeated for these technical reasons. There are concurrent findings of two Courts below and there is no ground to interfere in such findings recorded by two Courts below. Hence, the present regular second appeal is dismissed.

(KULDIP SINGH)
JUDGE

10.12.2015
sjks