

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No. 13633-C of 2015 in/&
RSA No. 612 of 2015 (O&M)
Date of Decision: 16.11.2015**

Piara Singh and anotherAppellants

VERSUS

Nirmal Singh & othersRespondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Mamli, Advocate
for the applicant-appellants.

SURINDER GUPTA, J.

CM No. 13633-C of 2015

This is an application under Order XLI Rule 19 read with Section 151 of the Code of Civil Procedure (CPC) for restoration of RSA No. 612 of 2015.

The appeal was dismissed due to non-appearance of appellants or their counsel on 20.10.2015.

Learned counsel for the appellants submits that he was busy before another Bench when this case was called on 20.10.2015 and he could not appear. He has supported his submission with an affidavit.

In view of the submission of learned counsel for the appellants, the appeal is restored to its original number.

RSA No. 612 of 2015

Heard.

This is Regular Second Appeal against judgment and

decree dated 10.08.2011 passed by Civil Judge (Senior Division), Kurukshetra whereby suit of plaintiff-Nirmal Singh was decreed and the defendants-appellants were directed to restore the physical possession of the suit property to the plaintiff. They were restrained from raising further construction on any part of the suit property and from alienating the same through any mode to any person.

In later part of the judgment the parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

Case of the plaintiff, in brief, is that vide agreement dated 15.06.1999, he was put in physical possession of suit property by defendants. This writing was duly thumb marked by defendants in token of its correctness and signed by several other persons. Being influential persons, defendants tried to raise construction over the suit property and threatened to dispossess the plaintiff. The matter was reported to the police vide application dated 12.12.2005 which did not desist the defendants and they continued their attempt to take forcible possession. The plaintiff moved another application to Superintendent of Police, Kurukshetra at which the defendants became more furious and forcibly and illegally dispossessed the plaintiff from the suit property on 24.12.2005 i.e. during pendency of the suit.

Defendant-Piara Singh (since deceased and now represented by his legal heirs) and defendant-Satnam Singh denied possession of the plaintiff over the suit property and writing dated 15.06.1999. It was alleged that no immovable property valued more than ₹ 100/- can be transferred without registered sale deed.

It was also denied that the plaintiff was dispossessed from the suit property on 24.12.2005.

Learned Civil Judge (Senior Division), Kurukshetra on the basis of evidence on record concluded that the plaintiff was dispossessed during pendency of suit and ordered restoration possession of the suit property.

The decree passed by learned Civil Judge (Senior Division) was affirmed in appeal by the District Judge, Kurukshetra.

Learned counsel for the appellants has argued that both the Courts have committed grave error of law and fact while relying upon report of the Local Commissioner appointed in this case in the year 2007, to reach the conclusion that the plaintiff had been dispossessed during pendency of the suit. The basis for relying on report of the Local Commissioner was that mud mortar used for erecting walls of the room on the disputed site was found wet at the time of his visit at the spot. In case, the plaintiff had been dispossessed from the suit property during pendency of the suit in the year 2005, the mud mortar could not be found wet in the year 2007. No other worthwhile evidence was before the Courts below to reach the conclusion that possession was delivered to the plaintiff under the agreement dated 15.06.1999.

In order to prove agreement dated 15.06.1999, the plaintiff had examined PW-2 Kewal Krishan Chhabra, Scribe of this agreement who has stated that he had scribed the agreement (Ex. P-1) on the asking of Nirmal Singh and Piara Singh. Nirmal Singh had paid a sum of ₹ 13,500/- in his presence. PW-3 Baldev

Singh has stated that Piara Singh sold the suit property to Nirmal Singh for a consideration of ₹ 13,500/- and possession was delivered to the plaintiff. The plaintiff himself while appearing as PW-4 corroborated the version as set up in the plaint.

The matter for decision before the Court below was only regarding possession of the plaintiff over the suit property and his dispossession during pendency of suit. Though, some observations have been made by learned Civil Judge (Senior Division) about title of the plaintiff over the suit property but those are not relevant and can be only termed *obiter dicta*. The plaintiff has not come up with any plea claiming his title over the suit property. Admittedly, no sale deed was ever executed in pursuance of agreement dated 15.06.1999. While appreciating the plea of plaintiff that he was in possession of the suit property at the time of filing of the suit and was dispossessed during pendency of the suit, the Courts below have relied upon statements of witnesses examined by the plaintiff and reached a conclusion that the writing/agreement dated 15.06.1999 was duly proved under which the possession was delivered to plaintiff on receipt of sale consideration of ₹ 13,500/-. Even if the plaintiff has not become owner of the suit property under the agreement still his possession over the suit property was protected under Section 53-A of the Transfer of Property Act. The matter of dispossession of plaintiff was also reported to the police and the proceedings under Sections 107 and 151 Cr.P.C. were initiated. A Local Commissioner was also appointed by the Court to report about the existing state of affair over the suit property.

Perusal of the judgments of Courts below clearly depict

that the report of Local Commissioner has not been relied upon to reach conclusion that the plaintiff was dispossessed during pendency of the suit. Rather this report was referred and relied to shatter the plea of defendant that three rooms and one shop which is a *pakka* construction exist at the spot. The Local Commissioner found one room that too without any roof constructed at the spot. The bricks used in the construction were new and the walls were without plaster. The mud mortar used was still semi wet and loose mud mortar was lying near walls of the room in a semi wet condition. On the basis of evidence, learned Civil Judge has rightly concluded that the defendants raised construction mentioned in the report (Ex. P-5) a little before the visit of Local Commissioner to the spot. It is also evident from the record that the plaintiff has not remained a moot spectator to the happening and had reported the matter to the police time and again and rushed to the Court immediately on fearing his dispossession.

As already discussed, transfer of immovable property by way of sale can only be by deed or conveyance (sale deed), however, in this case no sale deed was got executed by the plaintiff transferring right, title or interest in the suit property in his favour, as such, argument of learned counsel for the appellants that the plaintiff in the absence of sale deed cannot claim title of the suit property is acceptable.

On perusal of paper-book and judgment of the Court below I find no legal or factual infirmity in the conclusion drawn by the Court below based on evidence produced before it that the plaintiff has been able to prove his case that he was delivered

possession of the suit property under writing dated 15.06.1999 and was dispossessed during pendency of the suit.

No substantial question of law, requiring determination arises in this appeal, which has no merit.

Dismissed.

November 16, 2015
jk

(SURINDER GUPTA)
JUDGE