

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

RSA No.6179 of 2015 (O&M)

Date of decision : 19.12.2015

Satish Kumar

...Appellant

Versus

Smt. Pushpa Sharma 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. P.S. Jammu, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

CM No.15519-C of 2015

Prayer in the application is for condonation of delay of 155 days in refiling the present appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 155 days in refiling the present appeal is condoned.

Application stands allowed.

Main Case

Learned counsel for the appellant-defendant submits, that once the issue of ownership was left open in the ejectment proceedings, the lower

Appellate Court ought not to have rendered findings against Satish Kumar while dismissing the suit filed by the respondent-plaintiff seeking declaration with regard to the property in dispute allegedly purchased by the appellant vide conveyance deed from the Haryana Government.

I am of the view that since Lower Appellate Court had dismissed the suit, much less, the appeal, there was no occasion for lower Appellate Court to render findings vis-a-vis share of Satish Kumar as it has seriously prejudiced his right despite the fact that decree is in his favour. It is in these circumstances, the present appeal has been filed. It is settled law that any findings rendered by the Courts below though decree is not against the appellant, the aggrieved party can assail.

I am of the view that once the issue of ownership was left open to decided by the Civil Court, once trial Court and Lower Appellate Court dismissed the suit/appeal, there was no occasion to give findings against the appellant-defendants as he would have been left remediless. For the sake of brevity, the finding rendered by the lower Appellate Court in para No.23 and 24 reads thus:-

“23. Now what is revealed from the evidence is that the suit property was earlier in possession of Jot Ram as a tenant and Anil Kumar, the landlord had filed the ejectment petition which was allowed. Lateron Jot Ram had died and his LRs had filed the appeal, which appeal was dismissed, then LRs of Jot Ram had filed the civil revision and which civil revision was also dismissed and the suit property is the same which has been purchased by Satish Kumar from the Government and which was under occupation of Jot Ram under the tenancy of Anil Kumar

has been so held by the Hon'ble High Court and it is also clear that the ejectment of the same has been ordered upto the Hon'ble High Court and the identity on this very property was disputed by Satish Kumar and even Hon'ble High Court had observed that this property was rented out by Anil Kumar to Jot Ram. The petitioners namely Sat Narain and others fails to establish their plea regarding identity of property have been questionable and distinct from the demised and premises and it appears to be dishonest plea taken by the petitioner to cling on to the premises. It appears that during the pendency of the litigation Satish Kumar very cleverly had got the sale deed in his favour from the Government but the fact is that Satish Kumar alongwith others have been ordered to be ejected from the suit property on the ground of personal necessity of Anil Kumar and if Satish Kumar is claiming his ownership on the basis of sale deed in his favour from defendants No.2 and 3, then the appellants cannot say that they are also entitled to be owner of the suit property equally with Satish Kumar, therefore, the appeal of the appellants is without merit and is dismissed because the appellants alongwith Satish Kumar and others have already been ordered to be ejected from the suit property on the ground of personal necessity by the Hon'ble High Court, it means that the suit property belonged to Anil Kumar being landlord and any act of Satish Kumar regarding purchase of suit property from Haryana Government is hardly of any consequence. A tenant cannot deny the title of landlord during continuance of tenancy.

24. Therefore, the appeal being without merit, is dismissed. Authority relied upon by the learned counsel for the respondent are not applicable to the facts of the case. Decree sheet be prepared accordingly. File of appeal be

consigned to records after due compliance.”

Once the appeal has been dismissed, there was no occasion for the lower Appellate Court without discussing the evidence to ponder in the arena of surmises and conjectures by rendering findings vis-a-vis against the Satish Kumar. Accordingly, aforementioned findings in my view shall not be read against Satish Kumar once the suit of the respondent-plaintiff and appeal has been dismissed.

With the aforementioned observations, appeal stands disposed of.

This order of mine shall come into effect only when the deficiency of the Court fees has been made good.

19.12.2015

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**(AMIT RAWAL)
JUDGE**