

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

109

Regular Second Appeal No.4677 of 2014 (O&M)

Date of Decision: December 14, 2015

Dalbara Singh

...Appellant

Versus

Bahadur Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Narinder Kumar Vadehra, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

CM No.10905-C of 2014

Prayer in this application is for condonation of delay of 75 days
in re-filing the appeal.

It has been stated that after filing the appeal within the
limitation prescribed by law, certain objections were raised by the Registry,
one of which objection was that the copy of the trial Court judgment and
decree is not legible. Thereafter the applicant-appellant had applied for the
certified copy of the judgment and decree of the trial Court and after getting
the same, has filed the present appeal which has resulted in the delay of 75
days in re-filing the appeal. The application is duly supported by the
affidavit of the applicant-appellant.

For the reasons stated above, the present application is allowed.

Delay of 75 days in re-filing the appeal stands condoned.

RSA No.4677 of 2014

Challenge in this appeal is to the judgment and decree dated
03.11.2011 passed by the Civil Judge (Junior Division), Ludhiana, whereby
the suit filed by the appellant-plaintiff for decree of permanent injunction

restraining the respondents-defendants, their attorney associates, assignees, relatives etc. from interfering in peaceful possession of the appellant-plaintiff in the residential house situated in village Hasanpur, Tehsil and District Ludhiana, stands dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the Additional District Judge, Ludhiana, on 12.12.2013.

2. It is the contention of learned counsel for the appellant that the Courts below have not taken into consideration the fact that the possession over the suit property has been admitted by the respondents-defendants. Even if the said possession is said to be illegal or has been given by a person, who was not authorised by the true owner to give the portion of the residential house to the appellant-plaintiff, the injunction as prayed for should have been granted, especially when he was only seeking protection of his possession and dispossession except in due course of law. In support of this contention, he places reliance upon the judgments of the Supreme Court passed in the cases titled as *Walter Louis Franklin (dead) through LRs. Versus George Singh (dead) through LRs. 1997(3) SCC 503, Rame Gowda (D) by Lrs. Versus Mr. Varadappa Naidu (D) by Lrs. and Anr. 2004(1) SCC 769 and Aarti Versus Aruna Gautam and others 2014(2) R.C.R.(Rent) 508*. He accordingly contends that the impugned judgments and decree passed by the Courts below cannot sustain.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. As per the suit of the appellant-plaintiff, he came in possession of the house on he being inducted as a tenant by respondent-defendant

No.1-Bahadur Singh, who is son of respondent-defendant No.3-Bharpoor Singh, who is the true owner of the suit property and his son has no right to create any tenancy in favour of any other person. This factum is proved as nothing has been brought on record by respondent-defendant No.1-Bahadur Singh that he was ever authorised to deal with the property including the suit property, rather respondent-defendant No.1 has put forth a claim that he is the owner of the property as on the basis of the oral family partition, the said house came to his share and, therefore, he is the owner of the suit property but no evidence with regard to any such family settlement/partition has been adduced, whereas the specific stand of respondent-defendant No.3 is that he is the owner of the suit property. The possession, therefore, of the appellant-plaintiff has rightly been held to be illegal on the suit property.

The power of attorney namely Manjit Singh DW-1 of respondent-defendant No.3 Bharpoor Singh, who is a Non-Resident Indian and residing with his other family members abroad has supported the case of said respondent and nothing has come in his cross-examination which would prejudice the claim of respondent-defendant No.3. DW-2 Bakhshish Singh has admitted in his cross-examination that respondent-defendant No.3-Bharpoor Singh has transferred his rights qua the suit property in favour of his daughter Mandeep Kaur by a gift deed. In the light of this fact, the present suit against respondent-defendant No.3 claiming injunction against him, does not arise. It has further been conceded by the counsel for the appellant that Mandeep Kaur has availed of the remedy in law by filing a suit for possession against the appellant-plaintiff and, therefore, the present suit, in any case, cannot survive.

5. The judgments on which reliance has been placed by the

counsel for the appellant would not be applicable to the case in hand, although the principle laid down therein that a person in possession of immovable property cannot be dispossessed except in due course of law. In the present case, firstly respondent-defendant No.3-Bharpoor Singh is no more the owner of the property as he has transferred all his rights in favour of her daughter Mandeep Kaur by way of a gift deed and secondly the owner of the property, Mandeep Kaur, has filed a suit for possession against the appellant-plaintiff availing of her remedy seeking possession in accordance with law.

6. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

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

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.10906-C of 2014, stands disposed of as infructuous.

December 14, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE