

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5275 of 2014 (O&M)
Date of Decision : 06.10.2015

Davinder Singh

....Appellant

Versus

Beant Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Bansal, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-Davinder Singh filed suit for permanent injunction to restrain defendants from interfering in his cultivating possession in the suit land measuring 29 *kanals* 4 *marlas* situated in village Ram Tatwali, Tehsil Dasuya, as fully described in headnote of the plaint. The plaintiff claimed possession over the suit land as tenant under the owner.

2. The suit was dismissed by Civil Judge (Junior Division), Dasuya and in appeal the Ist Appellate Court upheld the plea of plaintiff-appellant that he is tenant in possession of the suit property but keeping in view the fact that the defendants have already taken the recourse to law to take possession from the plaintiff-appellant by way of filing petition for ejectment in the Court of Assistant Collector 1st Grade, Dasuya, he was declined the relief of injunction.

3. Learned counsel for the plaintiff-appellant has argued that the plaintiff-appellant is in possession of the suit land as tenant. Earlier his father was in possession as tenant. The owner of the land i.e. defendants initiated proceedings before the Revenue Court seeking his ejectment. The ejectment order was passed on

03.10.2003. The plaintiff filed appeal before the Collector which was allowed and the case was remanded to Assistant Collector 1st Grade. The defendants filed revision before the Commissioner, Jalandhar, which was dismissed and till date the case is pending before the Revenue Court. He has argued that in view of the established possession of plaintiff over the suit land he could not be refused the relief of injunction as he is apprehending his forcible dispossession. Ist Appellate Court has wrongly placed reliance on the observations in the case of **Akhtar and others vs. Israil and another, 2012 (4) PLR 797**. The observations in that case were in favour of the plaintiff-appellant and it was argued that the tenant is entitled to relief of permanent injunction as prayed for.

4. As is evident from perusal of the lower Court judgment, earlier Pala Singh father of the plaintiff was in possession of the suit property and he was allowed the decree for permanent injunction dated 02.02.1990 by the Court of Senior Sub Judge, Hoshiarpur. Appeal against the judgment and decree was dismissed on 11.11.1992 by the District Judge, Hoshiarpur. The suit land was purchased by father of defendants and they instituted a petition seeking recovery of mesne profits and ejectment of plaintiff. The petition was filed on 09.07.2002.

5. After the death of Pala Singh, the plaintiff filed civil suit on 08.11.2000, which was held to be infructuous in view of the proceedings for ejectment already initiated by owner of the land. Thereafter, this suit was instituted on 12.07.2006.

6. It is not disputed that proceedings in the ejectment petition filed by owner/defendants was pending when the suit was

filed. On the same analogy earlier suit filed on 08.11.2000 by plaintiff was dismissed, as such, the instant suit could have no other outcome. It appears that the plaintiff-appellant had been filing the suit and appeal just to prolong and delay the revenue proceedings on the pretext that the matter is pending before the civil Court. Litigation between the parties is pending for the last more than 30 years. It is evident that in view of the decree of injunction passed in favour of predecessor in interest of plaintiff, defendants have resorted to due process of law to seek possession of the suit land. Ist Appellate Court has committed no error of law while observing that the defendant-respondents have already started proceedings to take possession from the plaintiff-appellant in due course of law, as such, he is not entitled to relief of injunction. In ***Akhtar's case (supra)***, a coordinate Bench of this Court has observed that a tenant has the right to get the decree of permanent injunction against the true owner but in that case the facts were different. The proceedings seeking ejectment of the plaintiff-appellant had not been initiated. Even if, Ist Appellate Court has not properly appreciated the observations in the above referred case, still the same are not of any help to the plaintiff-appellant who has filed the instant suit only to misuse the process of Court.

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

Dismissed.

October 06, 2015

jk

**(SURINDER GUPTA)
JUDGE**