

In the High Court of Punjab and Haryana at Chandigarh

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CM No.15340-C of 2014 and
R.S.A. No.6425 of 2014 (O&M)

.....

Date of decision:10.7.2015

Yamin

.....Appellant

v.

Habib

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Naveen Singh Panwar, Advocate for the appellant.

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Inderjit Singh, J.

CM No.15340-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 3 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.6425 of 2014 (O&M):

This regular second appeal has been filed by Yamin-appellant/defendant against Habib-respondent/plaintiff challenging the impugned judgment and decree dated 29.8.2014 passed by the learned Additional District Judge, Sonapat, vide which the appeal filed by Habib-plaintiff against the impugned judgment and decree dated 30.5.2012 passed by Civil Judge (Junior Division), Sonapat, dismissing the suit of the plaintiff, has been allowed and the suit of the plaintiff has been decreed.

The brief facts of the case are that Habib-plaintiff (respondent

herein) filed a suit for permanent injunction against defendant-Yamin (appellant herein) by stating that an agreement of mortgage regarding the suit land was executed by defendant-Yamin on 26.2.2004 in the presence of witnesses and the suit land was mortgaged with the plaintiff for an amount of ₹6 Lacs. It was agreed between the parties that Yamin will pay interest @2 per cent per month upto 26.2.2006 on the above mentioned amount and the date of returning the amount was fixed as 26.2.2006. It was agreed between the parties that if the defendant will fail in returning the amount with interest to the plaintiff by 26.2.2006, he will hand over the vacant possession of the suit property to the plaintiff. It is also stated that the land underneath house was owned by Wakf Board and as such the sale deed of the same cannot be executed. It is also stated that as the defendant failed to repay the amount, therefore, he handed over the possession of the suit property. A document/receipt of possession was executed. The defendant out of lust is trying to interfere in the peaceful possession of the plaintiff and is threatening him to dispossess.

On the other hand, the case of the defendant is of denial. He denied the factum of executing the agreement of mortgage or of receiving any amount from the plaintiff and as such the question of returning or failure on account of same or in such circumstances, question of delivery of possession of the suit property to the plaintiff does not arise. It is stated that in fact the defendant is in possession of the suit property and as such the plaintiff has no right, title or interest.

The learned Civil Judge (Junior Division), Sonapat, dismissed

the suit and the appeal was filed by the plaintiff against the judgment and decree passed by the learned Civil Judge (Junior Division), Sonapat. The learned Additional District Judge, Sonapat, allowed the appeal and decreed the suit of the plaintiff. Aggrieved from the impugned judgment and decree dated 29.8.2014 passed by the learned Additional District Judge, Sonapat, the present regular second appeal has been filed.

At the time of arguments, learned counsel for the appellant-defendant argued that the civil suit was correctly dismissed by the lower Court and the finding given by the learned Additional District Judge reversing the judgment and decree of the learned Civil Judge (Junior Division), Sonapat, is not as per evidence and law. He argued that the findings are perverse. Therefore, the judgment and decree passed by the learned Additional District Judge, Sonapat, should be set aside.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that even if it is taken that suit land is owned by Wakf Board, it is not necessary to make Wakf Board as party if the suit is for permanent injunction between the plaintiff and the defendant. Both the parties are not claiming any ownership over the suit property. They are contesting regarding the possession only. The plaintiff alleges that he is in possession of the property and the defendant is stating that he is in possession of the suit property. The plaintiff has examined six witnesses in the present case, namely, plaintiff himself as PW-1, Ramdia as PW-2, Om Prakash son of Jage Ram as PW-3, Om Prakash son of Sultan Singh as PW-

4, Jai Bhagwan as PW-5 and Ravinder as PW-6 and has also proved agreement of mortgage dated 26.2.2004 Ex.P.1, receipt of possession dated 26.3.006 Ex.P.2 and site plan Ex.P.3.

On the other hand, the defendant neither examined any witness nor produced any document. Even the defendant himself has not come to the witness box to say that the plaintiff is not in possession of the suit property and he is in possession of the suit property. The evidence of the plaintiff remained unrebutted on the file. The witnesses of the plaintiff have supported the case of the plaintiff by submitting that the plaintiff is in possession of the suit property and this version of the plaintiff remained unrebutted on the file.

The pleadings of the defendant in the written statement cannot be taken as evidence. Therefore, the learned Additional District Judge, Sonapat has correctly set aside the judgment of the learned Civil Judge (Junior Division), Sonapat, which was not as per evidence and law. The findings given by the learned Additional District Judge, Sonapat, in the judgment and decree dated 29.2.2014 are correct and as per evidence and law which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Finding no merit in the regular second appeal, the same is dismissed. It is made clear that any finding given in this case have no bearing on the rights of the Wakf Board as the Wakf Board is not a party.

July 10, 2015.

(Inderjit Singh)
Judge

hsp