

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

**CR No.5480 of 2015 (O&M)
Decided on: 04.11.2016**

Rohit Dhir

....Petitioner

Versus

Bashir Masih and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Aditya Jain, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition, by invoking Article 227 of the Constitution of India, lays challenge to the judgment and decree dated 19.05.2015 passed by the Additional Civil Judge (Sr. Division) Moga whereby suit for possession of two shops and recovery of mesne profits w.e.f. 01.05.2008 till possession is restored filed by respondent No.1/plaintiff under Section 6 of the Specific Relief Act, 1963 has been allowed.

Counsel for the petitioner has submitted that United Church of Northern India is the owner of site ABCD. They leased out the land to Danial – respondent No.2 on 99 years basis vide lease dated 30.10.1992. Respondent No.2 leased out the portion DCEF to respondents No.3 and 4 on 05.07.1996 and they (respondents No.3 and 4) raised construction over the portion and also got an electric connection. They further leased it out to Sunil Joel who transferred possession to the petitioner/defendant No.1 on 13.06.2006. Portion

ABEF was given on lease by Danial – respondent No.2 to Ramesh Dhingra son of Rajinder Dhingra vide lease deed dated 22.04.2008. It is argued that as Rohit Dhir (petitioner herein) was not a party to the earlier litigation in regard whereof judgments and decrees have been relied upon by the trial Court, the impugned judgment is liable to be set-aside.

I have heard counsel for the petitioner and carefully perused the judgment dated 19.05.2015 whereby claim of Bashir Masih father of Danial – respondent No.2 for possession of two shops shown in Red colour and marked by letters ABCD in the attached plan, detailed in the headnote of the plaint as well as recovery of mesne profits from the petitioner @ Rs.4,000/- per month from the date of dispossession of the plaintiff i.e. 01.05.2008 till the date on which the property is actually handed-over by defendant No.1 to the plaintiff has been allowed.

A casual and plain reading of the detailed and well-reasoned judgment of the trial Court would make it evident that there is no error much less illegality in the judgment as would call for intervention by this Court. The Court in para 10 of the judgment at page 39 has noticed that “defendant No.1 (petitioner herein) traced the well-spring of his alleged legal competency to hold possession of the suit property to a lease deed allegedly executed by United Church of Northern India in favour of defendant No.2 (Danial). The string of events which unfolds thereafter being that defendant No.2 leased out the portion CDEF to defendants No.3 and 4 on 05.07.1996 who further

leased out the same to Sunil Joel. Sunil Joel transferred possession of same to defendant No.1. Apparently the mother transaction from which the right of defendant No.1 statedly germinates is the lease executed by United Church of Northern India in favour of defendant No.2 which related to property bearing Khasra No.565. The Court recalls that in such circumstances, when defendant No.1 derives his asserted rights in the suit property through defendants No.2, 3 and 4, he was very much amenable to rigors of the judgment Ex.P2 and P6 which had been passed against his claimed ascendants in interest. The defendants made no attempt to establish on record that possession of the plaintiff over the suit property, which had been repeatedly upheld in the referred judgments, was ever un-settled through any appropriate legal measures. Therefore, the inference which naturally flows from the projected state of events is the continuity of the legitimate possession of the plaintiff over the suit property. On the same analogy, it is held that the defendants had failed to justify the legitimacy of possession of defendant No.1 over the suit property.” The Court has also adversely commented upon testimony of Sunil Joel DW2 and negatived plea of the petitioner that Sunil Joel leased out the shops to Rohit Dhir – defendant No.1.

Counsel for the petitioner, on a pointed query raised by the Court, has not disputed that the present petitioner claims his possession over the suit property through defendants No.2, 3 and 4 who have already lost litigation viz-a-viz. respondent/plaintiff in regard to possession of the property in question. In this view of the matter, the petitioner cannot derive any advantage to his contention from the fact

that he was not a party in the earlier litigation that culminated in the judgments and decrees Ex.P2, P4, P6 and P8.

No other point has been raised.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed *in limine*. No order as to costs.

04.11.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No