

**In the High Court of Punjab and Haryana, at Chandigarh**

**Regular Second Appeal No. 2649 of 2004 (O&M)**

**Date of Decision: 15.03.2016**

Parkash Kapoor and Others

... Appellant(s)

Versus

Surinder Kumar

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. S.S.Rangi, Advocate  
for the appellant(s).

Mr. H.P.S.Ghuman, Advocate  
for the respondent(s).

**Shekher Dhawan, J.**

Present regular second appeal filed by the defendants against concurrent findings of facts recorded by both the Courts below, whereby the Court of first instance decreed the suit of plaintiff with the directions to the defendants to restore possession of the shop in dispute to the plaintiff. The First Appellate Court modified the said finding and direction was given to the Sub Divisional Magistrate, Amloh to pass an appropriate order for restoring possession to the plaintiff

since the property in question had been attached and receiver had been appointed by him during the proceedings under Sections 145/146 Cr.P.C.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts of the case for the purpose of decision of the present appeal that as per plaintiff, he had taken shop in question on rent from Pran Nath about ten years prior to the filing of the suit on payment of monthly rent of ₹ 110/- on the basis of oral tenancy followed by possession. However, no rent receipt was issued by the landlord. As per plaintiff, payment of rent had already been made. The defendants contested the suit *inter-alia* taking the plea that shop in question was never let out to the plaintiff on payment of monthly rent of ₹ 110/-, as alleged. There was no question of issuance of any receipt. Even the record of house tax is illegal and void. Defendants raised the version that they had pressed hard to enhance the rent. Defendants also took the plea that shop in question was mortgaged in possession with Sarup Singh son of Harnam Singh vide mortgage deed dated 16.1.1995 which was executed by Pran Nath in his favour. The said property has since been redeemed by Sarup Singh and defendants have been put in possession by him on receipt of mortgage money and an endorsement regarding receipt thereof has been made by Sarup Singh at the back of mortgage deed. As per defendants, they were in continuous possession of the disputed property as owners. At the time

of initiating the proceedings under Section 145 Cr.P.C., defendants were in actual and physical possession of the suit property and their articles were lying in the shop. Defendants prayed that suit be dismissed.

On these facts, Court of first instance settled the issues and parties were put to trial. However, the Court of first instance, after recording of evidence and appreciation thereof, decreed the suit of the plaintiff with the observation that plaintiff was in possession of the suit property at the time of filing of the suit and subsequently during pendency of the suit i.e. on 8.4.1996, despite issuance of *ad interim* injunction by the Court, plaintiff was dispossessed from his shop and as such decreed the suit of the plaintiff thereby issuing directions to the defendants to restore possession of the shop in question.

Defendants preferred first appeal but remained unsuccessful and the Court of first appeal modified the directions having been given to the defendants and in lieu of that, issued directions to the Sub Divisional Magistrate, Amloh to pass an appropriate order for restoration of possession to the plaintiff as attachment of property and appointment of a receiver was under his orders in the proceedings under Section 145/146 Cr.P.C. and as such present regular second appeal before this Court.

Learned counsel for the appellants, while assailing the findings recorded by both the Courts below, submitted that respondent was not proved to be in possession of the suit property in any capacity as tenants or otherwise. The observation regarding disputed possession

is found on judicial record i.e. copy of order passed on the bail application. Learned counsel for the appellants submitted that appellant No.1 is 84 years old lady and she has not received anything. Possession is with the receiver and the appellants have not get anything out of the property from the last 20 years and the Court below has completely ignored this fact and the said findings be set aside and appeal be accepted.

While arguing on this point, learned counsel for the respondent submitted that both the Courts below have already appreciated the oral as well as documentary evidence available on the file. It has come on the file as per statement of PW.1 Om Parkash Junior Assistant, Municipal Council, Amloh, who brought record of house tax that possession of the disputed shop was with the respondent only. As respondent was dispossessed during the pendency of the suit, the matter was reported to the police and even DDR is supporting the respondent's version. Plaintiff had filed the main suit for permanent injunction on the basis of his possession and he has been able to prove the possession on the file and the suit for permanent injunction is maintainable and there are no grounds to set aside the said findings and prayed that appeal be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that originally plaintiff had filed suit for permanent injunction simplicitor on the ground that he is in possession of the suit

property as tenant and he has been making payment of rent regularly. To prove that fact, plaintiff himself stepped in to the witness box and stated the fact that he was tenant in the shop in question. Plaintiff also proved his version by examining PW.1 Om Parkash, Junior Assistant, Municipal Council, Amloh who deposed on the basis of record of house tax register for the year 1986 that shop No.2, owned by Pran Nath, was under tenancy of Surinder Kumar Abrol on payment of ₹ 110/- per month and copy of house tax assessment register is Ex.PW.1/A.

Facts are not disputed that proceedings under Section 145/145 Cr.P.C. were initiated. As per plaintiff, defendants had been insisting for enhancement of rent and for that purpose plaintiff made prayer for issuance of injunction order, which was issued by the Court on 8.4.1996. Despite that, defendants threw out the goods belonging to plaintiff from the shop in dispute on 8.4.1996 at about 8.30 P.M. and the goods belonging to him were taken away in the trucks.

The Court below has rightly placed reliance upon testimony of DW.1 who had admitted the fact that plaintiff was tenant under the defendants at the time of filing of the suit. That being the evidence available on file and plaintiff himself stepped into the witness box to support his case and his version having been proved as per authenticated documentary evidence i.e. copy of house tax assessment register, plaintiff has certainly been able to prove that he was in possession of the disputed shop at the time of filing of the suit. Even as per proceedings by way of DDR No. 26 dated 4.4.1996, the shop was

found to be under tenancy of Surinder Kumar Abrol. The contention of defendants that tenancy came to an end on 4.3.1996 with the redemption of mortgage deed does not prove their version, rather supported the case of the plaintiff that he was infact in possession of the suit property as tenant and he was dispossessed forcibly, during pendency of the suit, despite injunction order issued by the Court. Plaintiff has been able to prove that he was dispossessed during the night of 8.4.1996. The Court below has rightly held that plaintiff was not in possession of the suit property as he was dispossessed during the pendency of the suit on 8.4.1996 and the application for spot inspection was rightly not pressed by the plaintiff and nothing can be read in between the lines on that point. The Court below has rightly observed that FIR Ex.DW.2/A was got recorded immediately and even defendants are facing trial in that case. The said concurrent findings of facts regarding possession of the plaintiff over the suit property at the time of filing of the suit and subsequently forcible dispossession by the defendants stand proved. There is no substantial question of law involved in this case calling for interference of this Court. However, as regard to directions issued by the First Appellate Court that Sub Divisional Magistrate, Amloh shall pass an appropriate order for restoration of the property to the plaintiff as attachment order was issued by him and receiver was also appointed by him in proceedings under Section 145/146 Cr.P.C., the same are affirmed being strictly in accordance with law.

In view of above, present regular second appeal stands disposed of.

**(Shekher Dhawan)**  
**Judge**

**March 15, 2016**  
"DK"