

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

**RSA No.5187 of 2012 (O&M)
Date of decision:11.04.2016**

Baba Balbir Singh

Vs.

... Appellant

Lal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vijay Sharma, Advocate
for the appellant.

Mr. R.S.Bains, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

C.M.No.14502-C of 2012

For the reasons stated in the application, duly supported by an affidavit, delay of 103 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.14503-C of 2012

For the reasons stated in the application, duly supported by an affidavit, delay of 50 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.5187 of 2012 (O&M)

The appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, suit for perpetual injunction

seeking restraint order against the appellant-defendant from interfering and taking forcible possession, much less, dispossessing him from the suit land, has been decreed.

Mr. Vijay Sharma, learned counsel appearing on behalf of the appellant-defendant submits that the plaint did not disclose the status of the plaintiff except bald averment that he is in peaceful possession of agricultural land and in cultivation of the same since long. The suit was instituted on 17.12.2007 on the basis of cause of action allegedly accrued on 03.12.2007, whereas, in the written statement, it was alleged that ownership of the land was of Wakf Board and whereas, the respondent-plaintiff appointed as Sewadar and he could not seek any injunction qua his possession. Both the Courts below gravely erred in decreeing the suit by misreading and mis-appreciating the oral and documentary evidence. The plaintiff when put to specific question in cross-examination feigned ignorance, rather stated that nobody came to dispossess on the date of alleged cause of action, i.e., on 03.12.2007. In fact, Gurudwara Sri Ber Sahib is under the control of the defendant which had been cultivating the land in question through its members and plaintiff, with one of such Sewadars. There was no question of forcible dispossession of plaintiff as he was holding the possession on behalf of the principal and thus, acquires no right and interest in the property irrespective of the long possession. The protection of the Court can be granted or extended only to a person, who, had valid subsisting rent agreement, lease agreement or licence agreement in

his favour, whereas, the watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He can never acquire interest in the property irrespective of his long possession. In support of his contentions, he relied upon the judgment of the Hon'ble Supreme Court in **A.Shanmugam vs. Ariya Kashatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and others 2012(6) Supreme Court Cases 430**. He further submits that even the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda (D) by LRs vs. Mr. Varadappa Naidu (D) by Lrs and another 2004(1) SCC 769**, the protection to the agent or servant acting at the instance of the owner has not been granted as it will not amount to actual physical possession. All these aspects have been ignored, much less, not appreciated by both the Courts below and thus, there is illegality and perversity in the findings. He further submits that plaintiff in cross examination admitted that land is cultivated by chela of Baba Santa Singh. Irresistibly, it is concluded that plaintiff is not cultivating the suit land in his individual capacity. He also submits that the Courts below erred in holding the evidence of DW2 being beyond pleadings, whereas, the Court has failed to notice that respondent-plaintiff has to stand on his own legs by discharging the onus which it has failed. The revenue record produced by the plaintiff show that he was cultivating the suit land as licensee/chela of Baba Santa Singh of Budha Dal and not in his individual capacity. Thus, following substantial questions of law arise for determination of this Court which read thus:-

- “i) Whether the judgment and decree dated 24.12.2011 and 16.4.2011 are illegal, perverse and result of misreading of evidence?*
- ii) Whether the licensee can file suit for permanent injunction against the principal?*
- iii) Whether the plaintiff has any cause of action to file present suit for permanent injunction when admittedly defendant has not tried to take forcible possession.”*

Mr. R.S.Bains, learned counsel appearing on behalf of the respondent-plaintiff submits that as per the revenue record brought on record, the status of the plaintiff is of 'Gair Marusi', i.e., tenant at Will and thus, he is not an agent or watchman or servant of the owner, who, is holding the possession on behalf of owner, therefore, the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda's case** (supra) and as well as, other judgment would apply to the present case. Nothing prevents the appellant-defendant to seek the possession in accordance with law and the injunction granted is most innocuous, much less, no substantial question of law arises for determination of the present appeal.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below and of the view that in the revenue record, Ex.P1 and Ex.P2, i.e., jamabandi and khasra girdawari, irresistibly show the possession of the plaintiff as tenant at Will, therefore, cannot be termed as a

caretaker on behalf of the appellant-defendant and therefore, resort to the possession has to be in accordance with law but not forcibly and illegally and rightly so, the Courts below have granted the injunction. In view of the long and settled possession of the respondent-plaintiff, the ratio decidendi culled by the Hon'ble Supreme Court in Rame Gowda's case (supra) would squarely be applicable, wherein, it has been held that a person cannot be dispossessed except in due course of law, even if, he is a trespasser. Exception carved out would not be applicable.

In view of the aforementioned facts and circumstances of the present case, I do not find any illegality and perversity in the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, the substantial questions of law, as noticed above, are answered in favour of the respondent-plaintiff and against the appellant-defendant.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 11, 2016
savita