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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 06.09.2016

1.

RSA-1867-2013 (O&M)

Kundan Lal Badhan

... Appellant

Versus

Kamaljit

... Respondent

2.

FAO-5112-2012 (O&M)

Kundan Lal Badhan

... Appellant

Versus

Kamaljit and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Deol, Advocate
for the appellant in both the appeals.

Mr. Surinder Sharma, Advocate
for respondent No.1 in RSA No.1867 of 2013 and
for respondent Nos.1 and 2 in FAO No.5112 of 2012.

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

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA**
No.1867 of 2013 titled as **“Kundan Lal Badhan V/s Kamaljit”** and FAO
No.5112 of 2012 titled as **“Kundan Lal Badhan V/s Kamaljit and others”**.

The appellant-plaintiff is aggrieved of the dismissal of the suit

seeking declaration to the effect that he is owner in possession of the suit property and as well as seeking injunction qua forcible dispossession and interference, has been dismissed by both the Courts below.

Mr. S.S. Deol, learned counsel appearing on behalf of the appellant-plaintiff submits that the property, aforementioned, was purchased vide sale deed dated 16.06.1982, though, of course it was in the name of the respondent-defendant, who is none-else, but the wife of the appellant. The appellant-plaintiff was working in the Income Tax Department and retired in the year 2002. In 2006, the relations between the parties had come to an end and the wife started living separately and started running a school. The factum of the possession of the house was admitted. In fact, it was a benami transaction, the entire money was contributed by the appellant for purchase of the property and therefore, the status of the respondent-wife is none-else, but only a Name Lender. The benami transaction is permissible as per the exception culled out in the Benami Transaction (Prohibition) Act, 1988 (hereinafter called 'the 1988 Act') and this fact has totally escaped the notice of the Courts below. He submits that at the best, the Courts below ought to have granted injunction in view of the fact that the appellant-plaintiff had been found to be in long and settled possession i.e. in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **"Rame Gowda (D) LRs V/s Mr. Varadappa Naidu (D) by LRs and another" 2004 (1) SCC 769**, the suit should have been decreed at least in part, thus, urges this Court for formulation of the following substantial questions of law:-

1. Whether the appellant-plaintiff has acquired the ownership
by way of exception culled out in the provisions of Section

4 of the 1988 Act.

2. Whether in view of the aforementioned provisions, the appellant-plaintiff had become owner in possession of a land.
3. Whether the appellant-plaintiff is found to be in long and settled possession can be dispossessed forcibly except in due course of law.

Per contra, Mr. Surinder Sharma, learned counsel appearing on behalf of the respondent-defendant submits that she is not the owner of the school, but working as a teacher and drawing very nominal salary. Even a petition under Section 125 CRPC for maintenance is pending and a revision petition filed thereon is also pending for the adjudication in this Court. The appellant-plaintiff has failed to prove the source of money, in fact, the property is in the ownership of the respondent-defendant. No injunction against the true owner can be granted as the status of the appellant-plaintiff is of trespasser and cannot seek the injunction for protecting his illegal possession, thus, urges this Court for affirming the findings under challenge.

As regards the appeal bearing FAO No.5112 of 2012, he submits that the appellant-plaintiff had instituted an appeal against the order, whereby the contempt application under Order 39 Rule 2-A CPC, has been dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

In view of the aforementioned facts, I am of the view that once,

the appellant-plaintiff has failed to prove the source of money, he cannot take up the plea of benami transaction that he was the real owner and the Name Lender was respondent-defendant, thus, the exceptions of Section 4 of the 1988 Act cannot come to his aid. In the absence of the same, an irresistible conclusion is liable to be drawn that the respondent-wife is the owner, but the questions arises before this Court that whether in such situation when the appellant-plaintiff is not found to be owner, but in possession of the property, can he protect possession vide injunction, I am of the view that the injunction against the true owner, who was found to be in long and settled possession can be granted in view of the ratio decidendi culled out by the judgment of Hon'ble Supreme Court in "Rame Gowda's case" (supra).

Thus, it is held that the appellant-plaintiff is not owner, but in possession of the property and the respondent-wife is living separately, in my view, the Courts below at least should have granted the injunction.

In view of the aforementioned facts and circumstances, the findings rendered by both the Courts below qua not granting the injunction are hereby set aside and the suit is partly decreed. The respondent-defendant, his agents or any other relatives or servants are restrained from dispossessing the appellant-plaintiff except in due course and rest of the findings rendered by the Courts below viz-a-viz the non-granting of the declaratory decree is hereby affirmed. Accordingly, the substantial questions of law bearing Nos.1 and 2 are answered in favour of the respondent-defendant and against the appellant-plaintiff, whereas the question No.3 is answered in favour of the appellant-plaintiff and against

As regards the other appeal bearing FAO No.5112 of 2012, I am of the view that the appellant-plaintiff is not able to make out a case of alleged violation of the interim stay and therefore, no ground is made out for interference viz-a-viz the alleged violation of the interim injunction and accordingly, the appeal is dismissed.

With the aforesaid observations, the appeal bearing RSA No.1867 of 2013 is partly allowed and the appeal bearing FAO No.5112 of 2012 is dismissed.

(AMIT RAWAL)
JUDGE

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