

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.1129 of 2016 (O&M)
Date of decision:3.8.2016

Manmohan Singh and another

... Appellants

versus

Tarsem Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Ramesh Sharma, Advocate,
for the appellants

...

AMOL RATTAN SINGH, J. (Oral)

1. This is the second appeal of the defendants after the suit filed by respondent No. 1 herein (plaintiff) seeking possession of a house etc., as described in the headnote of the judgment of the learned Additional Civil Judge, was decreed in his favour and the first appeal filed by the present appellants, against that judgment and decree, was dismissed by the learned Additional District Judge, Jalandhar, vide the impugned judgments and decrees.

2. Learned counsel for the appellants has argued that the case set up by the respondent-plaintiff in the suit filed for possession (out of which this second appeal arises), was that, pursuant to the order of a revenue Court, warrants of possession, after ejectment had been ordered, were issued in favour of respondent No.1-plaintiff and that he had actually taken possession, after which the present appellants (defendants) repossessed the

suit property forcibly.

3. He submits that, as a matter of fact, there was no proof of the warrants ever having been executed and the learned Courts below, simply on account of the warrants having been issued, presumed that they had been executed and that thereafter the respondent-plaintiff had been dispossessed by the appellants, leading to the filing of the suit, out of which this appeal arises.

4. Firstly, of course, it is seen that the learned Courts below have presumed correctly that possession was taken from the appellants by the respondent-plaintiff, pursuant to the warrants of possession issued, after ejectment proceedings filed before those Courts attained finality upto the authority of the Financial Commissioner. This is so because of the fact that there was otherwise no reason for the respondent-plaintiff to have filed a civil suit for taking possession again, when all that he had to do was to seek execution of the warrants of possession issued in his favour.

5. Secondly, it is an admitted fact that the suit property consists of a residential house on agricultural land and is shown as *gair mumkin* (non-agricultural) in the revenue records. Hence, even if it is presumed, for the sake of presumption, that the respondent-plaintiff actually never took possession in the first place, of the suit property, pursuant to the warrants of possession issued in his favour, learned counsel has not been able to counter the query put to him, (as there was no valid counter to that), that undoubtedly the suit property is owned by the respondent-plaintiff and further, that the order of the Financial Commissioner, ordering ejectment of

the appellants, was never ever challenged and had become final. No evidence with regard to any rent paid by the appellants to the respondent-plaintiff was led before the Courts below in the present lis; again obviously because in the other lis before the revenue Courts, such evidence had been led, yet leading to an order of ejectment, as the evidence with regard to rent not having been paid, was accepted.

6. Hence, once those orders had become final and the suit property, in any case, was in the ownership of the respondent-plaintiff, I see no reason why the suit for possession in favour of the respondent-plaintiff would not otherwise have been decreed, there having been no plea of adverse possession ever having been set up, in any case.

7. With the aforesaid observations, finding no merit in the present appeal, the same is dismissed in *limine*, but with no order as to costs.

CM No.3098-C of 2016

8. In view of the fact that the appeal has been dismissed, *in limine*, as above, the question of condonation of the delay of 3 days in filing the appeal is rendered academic and is not gone into.

3.8.2016
pk/nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No