

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

**Regular Second Appeal No.1159 of 2015 (O&M)
Date of Decision: April 27, 2016.**

Kartar Singh

.....APPELLANT(s).

VERSUS

Prem Lata and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

SURINDER GUPTA, J.

This is appeal against the judgment and decree passed by learned Additional District Judge, SAS Nagar (Mohali), whereby the appeal filed by respondent-plaintiff Prem Lata was accepted and the appellant-defendant was restrained from interfering in her peaceful possession and dispossessing her from the disputed house.

2. The case of the plaintiff, in brief, is that she is owner in possession of the house in dispute, where she is residing for the last 20 years. Appellant-defendant No.1 Kartar Singh in connivance with Shamsheer Singh, brother of plaintiff wanted to forcibly dispossess the plaintiff and her family from the house in question.

3. Defendant No.1 contested the claim of plaintiff with the plea that she is not resident of village Mubarakpur, where the suit property is situated, rather she is resident of village Meerpur. The house in dispute was

mortgaged by Prem Singh son of Omkar Singh with him vide writing dated 18.07.2001 for a sum of ₹51,000/- and was later on sold to him on 17.09.2007 for a sum of ₹60,000/-. Part of this property was purchased by defendant No.1 from Jasbir Singh son of Rai Singh, resident of Mubarakpur vide writing 16.10.2006. Plaintiff, who belongs to village Mubarakpur, had sold her property in the village and was residing at village Meerpur. On her request, defendant No.1 allowed her to stay in the disputed house for few days so as to enable her to construct her own house. Taking advantage of her possession, she applied and obtained electric connection in her name. On coming to know of this fact, defendant No.1 filed application to Punjab State Electricity Board and the electric connection allowed in the name of plaintiff was disconnected. Suit property is situated in village Mubarakpur and was got vacated from the plaintiff, as such, she is no more in possession of the same.

4. Learned Civil Judge (Junior Division), Dera Bassi observed that as per the documents placed on record, plaintiff is resident of village Meerpur, while the suit property is situated in village Mubarakpur. Plaintiff has also failed to produce any document of her ownership and possession over the disputed house and how she came in possession of the same? It was further observed that plaintiff was allowed by defendant No.1 to live in this house for few days as she wanted to construct her own house but taking the advantage of her possession, she obtained electric connection which was later on got disconnected. All these facts when taken cumulatively, prove that the plaintiff is not in possession of the disputed house.

5. Learned Civil Judge also discarded the plea of defendant-

appellant about his title and possession over the suit property with the observation in para 12 as follows:-

“12. Hence, the defendant No.1 has failed to produce (sic prove) the ownership of Prem Singh and Jasbir Singh over the house in question at that time when he had purchased the house in question from him (sic them). Moreover, in order to prove the possession over the house in dispute, defendant No.1 has not examined any witness from village Mubarakpur to support and corroborate his statement. Hence, the defendant No.1 has also failed to prove his ownership and possession over the house in dispute.”

6. In appeal, the first Appellate Court reversed the finding of learned Civil Judge regarding possession of plaintiff over the suit property and decreed the suit with the observation that she is in possession of the suit property but not as a trespasser and decreed the suit.

7. I have heard learned counsel for the appellant and perused the paper book and record of the Courts below with his assistance.

8. To put the entire matter in narrow compass, it will be relevant to take note of the pleadings of appellant-defendant that he had put the plaintiff in possession of the suit property. She had also taken an electric connection in this property in her name which he later on got disconnected. A witness examined by the appellant-defendant namely Surinder Singh DW2 has stated in clear terms that it is the plaintiff, who is in possession of the disputed property and she had solemnised the marriage of her daughter in this house 2-3 months before his statement i.e. in or around July, 2011 and this suit was filed in the year 2007.

9. The appellant has also failed to corroborate his testimony of

taking the possession of the suit property from the plaintiff. It is improbable and unbelievable that a dispute is going on between the parties and the appellant-defendant in order to pressurise the defendant has got the electric connection of the house disconnected and still the plaintiff vacated the house without any order of any authority, mediation or panchayat.

10. The admission of the witness of defendant (DW2) that plaintiff is living in the house, is clear and unambiguous. The identity of the house is not disputed. The electric connection was taken by the plaintiff in this house which the appellant got disconnected. In these circumstances, it is totally immaterial as to whether plaintiff is living in village Meerpur, Post Office Mubarakpur or village Mubarakpur. As it was an injunction suit, no findings qua the title of parties over suit property is either relevant or could be recorded by the Court. Observation, if any, made by the Courts below qua title of the parties, in such circumstances, is merely an obiter dicta and does not restrict the remedy available to either party under law to find recourse of its grievance, in this regard.

11. In view of above facts and circumstances, I find no legal or factual infirmity in the judgment of first Appellate Court, calling for any interference.

12. No substantial question of law requiring determination arises in this appeal, which has no merits.

13. Dismissed.

April 27, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE