

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 175 of 2015 (O&M)

Date of Decision : 15.12.2016

Joginder Singh and another

....Appellants

Versus

Jugal Kishore and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. N.K. Suneja, Advocate
for the appellants.

Mr. Vijay Sharma, Advocate
for respondent no. 1-caveator.

Mr. Animesh Sharma, Advocate
for respondent no. 2.

Surinder Gupta, J.

Plaintiff-respondent no. 1 (Jugal Kishore) filed suit seeking the relief of permanent injunction to restrain the defendants, including appellants in this appeal, from interfering in his peaceful possession over the suit land, which was decreed by Additional Civil Judge (Senior Division), Patiala. Bhagwant Singh one of the defendants filed appeal against judgment and decree passed by the trial Court, which was dismissed. Appellants, Joginder Singh and Pal Singh @ Varinderpal Singh, had not preferred any appeal against the judgment and decree of trial Court, however, they have come up with this second appeal against judgment of Ist Appellate Court.

2. Learned counsel for appellants has argued that the suit property belongs to Municipal Corporation, which was not impleaded as party. Plaintiff-respondent no. 1 is in possession of the suit property in which appellants are co-sharers but he is not making payment of rent to appellants

or even to Municipal Corporation and being trespasser he has no right to remain in possession of the suit property. He has placed reliance on observations of this Court in case of **Duli Chand vs. Om Parkash, 2002 (2) Civil Court Cases 201 (P&H)** and observations of Supreme Court in case of **Mahabir Prasad Jain vs. Ganga Singh, 1994 (4) RCR (Civil) 464.**

3. Learned counsel for plaintiff-respondent no. 1 has argued that possession of plaintiff over the suit property is admitted. He has not claimed any relief against his landlord or Municipal Corporation, as such, his suit is not bad for non-joinder of necessary party. Even if, plaintiff is considered to be a trespasser, being in established possession he is entitled to relief of injunction. In support of his contention he has relied upon observations of Apex Court in case of **Rame Gowda (D) by LRs vs. Mr. Veradappa Naidu (D) by LRs and another, 2004 (1) SCC 769.** He has further argued that judgment of the trial Court has attained finality against appellants as they never challenged the same by filing appeal before Ist Appellate Court.

4. Learned counsel for appellants, while refuting the contention of learned counsel for plaintiff-respondent no. 1 regarding maintainability of appeal, has relied upon observations of this Court in case of **Punjab Wakf Board, Ambala vs. Gram Panchayat, Mangali Aklan and another, 2005 (1) RCR (Civil) 818 (P&H)** and **Dharam Chand and another vs. Vishan Das and another, 1986 Revenue Law Reporter 359 (P&H)** and has argued that even if first appeal was not filed by appellants, second appeal is maintainable.

5. Before proceeding further, it will be appropriate to take note of contentions of learned counsel for the parties regarding maintainability of

appeal. Admittedly, appellants have not filed any appeal against judgment and decree passed by the trial Court, which shows that they were satisfied with the findings recorded by the trial Court. Observations in case of ***Punjab Wakf Board, Ambala (supra)*** are not helpful to appellants. In that case, the dispute was between Punjab Wakf Board and *Gram Panchayat* regarding the title of suit land. Plaintiff in that suit had pleaded that he was lessee under Punjab Wakf Board and the trial Court approved his plea and decreed the suit restraining the *Gram Panchayat* from interfering in possession of plaintiff. The appeal filed by *Gram Panchayat* was accepted by Ist Appellate Court and it recorded finding that suit land was a graveyard, though owned by Wakf Board. It also observed that Wakf Board had no jurisdiction to alter the nature of suit land and lease out the same to plaintiff. In regular second appeal, an issue was raised that appeal filed by Punjab Wakf Board was not maintainable because they had not filed any appeal against the judgment and decree of trial Court. The above plea was repelled with the observation that the trial Court while decreeing the suit had upheld the title of Punjab Wakf Board as owner with the observation that it was competent to lease out the same to plaintiff. Having no grievance against the judgment and decree passed by the trial Court, Punjab Wakf Board was not required to file any appeal. In this case appellants were aggrieved by the findings of learned trial Court still they opted not to file any appeal.

6. In ***Dharam Chand's case (supra)***, decree passed by the trial Court was modified in appeal by Ist Appellate Court and in second appeal it was observed that the defendant could challenge only that part of the judgment, which was passed by the Ist Appellate Court in appeal. Facts of

that case are also quite distinguishable and observations made therein are not applicable to facts of the present case.

7. As a sequel of my above discussion, I am of the opinion that judgment of the trial Court has attained finality against defendants no. 2 and 3. Bhagwant Singh, defendant no. 1, who had filed appeal before the Ist Appellate Court, has not filed appeal or have joined appellants, as such, the appeal filed by appellants is not maintainable.

8. However, in order to set the controversy at rest, I have also examined the case of appellants on merit. Admittedly, plaintiff-Jugal Kishore is in possession of the suit property. Plaintiff-respondent no. 1 claims to be in possession of suit property as tenant under Prit Pal Singh and has pleaded that after death of Prit Pal Singh he is paying rent to his wife. Ratio of judgments in citations referred above by learned counsel for appellants is not applicable to facts of the present case to deny the relief of injunction to plaintiff even if, his possession over the suit property is not authorized. In ***Mahabir Prasad Jain's case (supra)*** Apex Court has observed that where the plea of person that he is in possession as tenant is discarded, his suit is not maintainable and he is not entitled to any relief under Section 6 of the Specific Relief Act. Section 6 of the Specific Relief Act gives right to a person to recover possession of immovable property, if he has been dispossessed without his consent or in due course of law, notwithstanding any other title that may be set up in such suit. The present suit filed by plaintiff is not a suit for possession under Section 6 of the Specific Relief Act, as such, observations of Apex Court in the aforesaid case are not applicable to facts of instant case.

9. Observations of Single Bench of this Court in ***Duli Chand's***

case (supra) are also of no help to appellants in view of the ratio of judgment in **Rame Gowda's case (supra)**, wherein Apex Court observed as follows:-

“8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law, he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted

trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into, would not be called as one acquiesced to by the true owner.”

10. Admittedly, the land is not owned by appellants and no relief has been claimed by plaintiff-respondent no. 1 against owner of the land i.e. Municipal Corporation, Patiala. If, appellants or any other person has any title or concern with the suit land, they have right to proceed against plaintiff in due course of law.

11. Learned counsel for appellants has moved application (CM-1445-C-2015) under Order XLI Rule 27 CPC to produce certain documents on record, which are rent deed executed by Municipal Corporation, Patiala, partnership deed of appellants, Will of Harnam Singh, registration and licence for running factory issued in favour of Bhagwant Singh and receipt of deposit of some amount with Municipal Corporation by Bhagwant Singh (non-appellant). This application cannot be allowed at this stage for the reason that nothing has been stated in application as to how documents sought to be produced are relevant and why these were not produced earlier.

I reproduce all the paras of application moved by appellants, as follows:-

- “1. That the above noted appeal is now fixed for 01.09.2015.*
- 2. That the documents i.e. Annexure A-1 to A-5 are essential for the proper adjudication of the case.*

3. *That these documents could not be produced despite due diligence and care.*

12. In order to seek permission to lead secondary evidence, it is incumbent on appellants to aver as to how documents sought to be proved are relevant for just decision of the case and why they could not produce these documents earlier despite exercise of due diligence. Appellants will be at liberty to produce these documents as and when they file suit seeking the relief of possession of suit property against plaintiff-respondent no. 1. For the question limited to the grant of relief of injunction these documents are not relevant or material, hence this application is declined.

13. As a sequel of my above discussion, this appeal has no merit.
Dismissed.

December 15, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No