

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

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Regular Second Appeal No.425 of 2016 (O&M)
Date of Decision: April 12, 2016

Hardev Singh

...Appellant

Versus

Jagroop Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sunny K. Singla and Mr. Sherry K. Singla, Advocates
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.4426-C of 2016

Prayer in this application is for preponement of the hearing of the appeal on the ground that the execution proceedings are listed on 06.05.2016, where warrant of possession has been issued by the Executing Court by order dated 29.03.2016.

For the reasons mentioned in the application which is duly supported by the affidavit of the applicant-appellant, prayer made in the application is accepted.

The hearing of the main appeal is preponed and the same is taken on board for consideration.

The application stands disposed of.

RSA No.425 of 2016 (O&M)

Challenge in this appeal is to the judgment and decree dated 01.07.2014 passed by the Civil Judge (Junior Division), Malerkotla, whereby the suit filed by respondent No.1-plaintiff for possession of land measuring 2 bighas and 1 biswa as detailed in the headnote and the suit for recovery of ₹50,000/- as mesne profits for the crops Kharif 2008 to Rabi

2011, has been decreed, appeal preferred against the said judgment and decree by appellant-defendant No.1 has been partly allowed to the extent of reduction of mesne profits from ₹50,000/- to ₹15,000/-, however, the appeal challenging grant of possession, has been dismissed by the Additional District Judge, Sangrur, on 14.10.2015.

2. It is the contention of learned counsel for the appellant that respondent No.1-plaintiff has in the suit not specifically stated the date on which the possession has been taken by the appellant-defendants. He contends that it is merely a concocted story that the possession has been taken by the appellant-defendants. In fact, as a matter of fact, on the basis of an oral exchange which was about 30 years back, the possession of the property was taken by the appellant-defendants and since then they are holding the same. Reliance has been placed upon the judgment of the Supreme Court in *Mr. Shyam Sunder Prasad and Ors. Versus Mr. Raj Pal Singh and Anr., 1995(1) SCC 311* and on the basis of the said judgment, he contends that the onus was upon respondent No.1-plaintiff to show that the possession has been taken by the appellant and specifically as to when it was so taken. He, on this basis, contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant and have gone through the impugned judgments but do not find merit in the contentions, as has been raised by the counsel.

4. The factum that an earlier suit was preferred by the appellant-defendants, wherein they had claimed ownership of the property on the basis of an oral exchange which was alleged to have taken place between the parties and on the basis of his possession for the last more than

30 years, was dismissed by the trial Court on 07.12.2004 Exhibit P-2. Appeal preferred against the same by the appellant-defendants was dismissed by the learned Additional District Judge, Sangrur, on 04.10.2006 Exhibit P-4. From the judgment Exhibit P-4, it comes out that the appellant-defendants made an effort to seek injunction on the basis of khasra girdawaris in their favour but the Court specifically held that the revenue authorities were not competent to change the khasra girdawaris in favour of the appellant when injunction was there in favour of the respondent which was as per the judgment dated 18.11.1999 Exhibit P-8. A plea has been taken by the appellant of concocting a story regarding their dispossession after the decision but there is no ground to disbelieve the same in the light of the injunction which has been obtained by them against the appellant and in the light of the failure on the part of the appellant-defendants to get a declaration that they were owners in possession of the suit property because of an oral exchange.

5. The judgments and decree as passed by the Courts below being based upon proper appreciation of the pleadings and the evidence brought on record, cannot be faulted with.

6. Reliance of learned counsel for the appellant on the judgment of the Supreme Court in *Mr. Shyam Sunder Prasad's case (supra)*, on principles, cannot be disputed but in the present facts and circumstances which are distinguishable from the one which were in the said judgment, the said judgment would not be applicable in the case in hand.

7. No other point has been argued by the counsel for the appellant.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.1267-C of 2016, stands disposed of as infructuous.

April 12, 2016

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE