

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

RSA No.6640 of 2016 (O&M)

Date of decision : 19.12.2016

Kulwant Kaur

...Appellant

Versus

Maha Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Raj Kumar Kakkar, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

CM No.17338-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 43 days in refiling the appeal is condoned.

Application stands allowed.

Main Case

The appellant-plaintiff is aggrieved of the concurred findings of fact, whereby suit seeking following relief has been declined:-

“Suit for a decree of permanent injunction restraining the defendants from causing any forcible interference in the actual, peaceful, lawful and physical possession of the plaintiff over a room, shown in red colour in the site plan attached, which is a portion of House No.3, Street No.11, Ferozepur including a room measuring 40' x 19'3” shown

in blue colour as its owner in exclusive possession and forcibly dispossessing the plaintiff from the same, by way of execution of ex parte ejectment order dated 10.3.2006 procured by the defendant in an ejectment application titled as "Netal Pal Vs. Om Parkash son of Ram Dass, resident of House No.3, Gali No.11, Ferozepur Cantt" in a rent application bearing No.25-2 of 10.03.2004 passed by the court of Shri Surinder Mohan, the then Rent Controller, Ferozepur or in any other manner, on the basis of oral as well as documentary evidence. Plaintiff presented on 10.11.2009."

Mr. Raj Kumar Kakkar, learned counsel appearing on behalf of appellant-plaintiff submits that suit for permanent injunction restraining the defendants from causing any forcible, interference, dispossession in respect of property aforementioned was filed. The trial Court dismissed the suit. However, lower Appellate Court granted injunction not to dispossess, except in due course of law. Admittedly and concededly, possession was found.

He submits that during the interregnum, part of the property had exchanged in hand in pursuance of the judgment and decree passed in suit seeking specific performance of the agreement to sell. Sale deed was effected on 25.04.2003. After having acquired the ownership, ejectment proceedings were filed against Om Parkash who was admittedly tenant of the appellant who had handed over the possession. Under the garb of that execution, possession has been sought, therefore, granting of the injunction is insignificant.

He further submits that Om Parkash, while writing Ex.P5 dated

13.06.2009, had handed over the possession whereas the ex parte ejectment order is dated 10.03.2006, therefore, under the garb of the said ejectment order, possession cannot be given, thus, there is gross illegality and perversity.

I have heard learned counsel for the appellant-plaintiff and appraised the paper book and of the view that the aforementioned contention of Mr. Kakkar, is not available as question of tenancy has not been proved on record except the letter given by Om Parkash in handing over the alleged possession. Injunction granted is fair and justified. The interest of the appellant-plaintiff has been protected by granting injunction not to interfere and forcibly dispossess in the area mentioned in the plaint, except in due course of law.

I am afraid that arguments of Mr. Kakkar, that appellant-plaintiff is not a party in the ejectment order dated 10.03.2006 is also not sustainable. Nothing prevented to challenge the ex parte decree even if the appellant is not party by seeking leave of the Court.

In my view findings of the Courts below is perfect, legal and justified. I do not intend to differ with the same.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

19.12.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No