

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 616 of 2015 (O&M)
Date of decision : February 11, 2016

Baikunth Rai Sharma

..... Appellant

Versus

Mandir Shri Naina Devi Ji

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jatinder Singla, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

CM No. 1789-C of 2015

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 86 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 616 of 2015 (O&M)

The appellant-plaintiff is aggrieved against the order dated 3.5.2014 whereby the suit seeking permanent injunction with consequential relief of possession of site of cycle stand decreed by the trial court but dismissed by lower appellate court.

Learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant was running a cycle stand in the premises owned by the respondent-defendant. The

injunction application under Order 39 Rule 1 and 2 was filed on 1.10.2001 and the same was allowed on 17.10.2001 wherein it was observed that the appellant-plaintiff shall not be dis-possessed except in due course of law. On 27.10.2001 the respondent dispossessed the plaintiff. The trial court on the basis of oral and documentary evidence decreed the suit. However, the lower appellate court has committed illegality and perversity in reversing the decree of the trial court by holding that the alleged rent receipts, relied upon by the plaintiff, does not show to be of rent but income from cycle stand.

He further submits that the plaintiff had registered the cycle stand with the Labour Commissioner in the name of M/s Sharma Cycle Stand, thus, status of the plaintiff is of a tenant. No tenant can be dis-possessed except in due course of law, thus substantial question of law arise for determination by this Court.

I have heard learned counsel for the appellant and appraised the paper book.

There is no substance in the contention of learned counsel for the appellant. The receipts Ex.P-29 and P-30 are receipts of income from the cycle stand. The plaint is conspicuously wanting with regard to pleadings of tenancy whether oral or written, much less date of registration of the cycle stand with the Labour Commissioner is a unilateral act of the appellant. Rightly so, the lower appellate court, being the last court of fact and law reversed the finding of the trial court.

I do not intend to differ with the finding rendered by

the lower appellate court which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the lower appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

February 11 , 2016
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