

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3291 of 2016 (O&M)

Date of Order: 18.08.2017

Daljit Singh

..Appellant

Versus

Anil Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jasraj Singh, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral).

C.M.No.8744-C of 2016

Prayer in this application is for condonation of delay of 43 days
in filing the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit, the delay of 43 days in filing the appeal is
condoned.

Application is allowed.

RSA No.3291 of 2016

Plaintiff is in regular second appeal against the concurrent
findings of fact arrived at by the Courts below.

Plaintiff filed a suit for permanent injunction restraining the
defendant from interfering in the ownership and possession of the plaintiff.
Plaintiff had claimed that original owner Ram Rakha @ Rakha Ram hakim
had sold the property to the father of the plaintiff, namely, Harbans Singh,
vide agreement to sell dated 09.10.1968. It was further asserted that father
of the plaintiff Harbans Singh died on 29.07.1988 and thereafter plaintiff

has been continuing in possession of the property, in dispute.

Defendant appeared and contested the suit. Defendant denied that Rakha Ram hakim was owner. Defendant claimed that the property was owned by Bua Dass and Harbans Singh father of the plaintiff was a tenant in the small shop in dispute. It was claimed that Harbans Singh left the suit property because the shop, which was in the shape of 'Khola' had fallen down due to natural wear and tear. It was further claimed that there was no electricity connection installed as there was no building existed.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff.

First appeal preferred by the plaintiff was also dismissed after re-appreciating the evidence available on the file.

I have heard counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below as well as the records.

Learned counsel for the appellant has submitted that possession of father of the appellant is an admitted fact. He further submits that there is no allegation that father of the appellant was ever dispossessed. He further submitted that the possession in favour of the plaintiff should be assumed as after the death of his father in 1988, he continued in possession.

I have considered the submissions of learned counsel for the appellant.

During the course of arguments, it is not in dispute that the shop or the 'khola' has been fallen down. Now there is no building on the spot. That itself proves that the defence taken by the respondent is correct and based upon factual position. The defendant has taken a stand that

Harbans Singh was a tenant on a shop owned by Bua Dass, who was uncle of the defendant. It is the case of the defendant that Harbans Singh left the suit property because the building had become dilapidated and eventually fallen down.

Taking into consideration the facts and circumstances of the case, I do not find any reason to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

August 18, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No