

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.5319 of 2015 (O&M)

Date of decision:8.2.2017

Rewati Lal

...Appellant

Versus

Hardwari Lal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.D.N.Rao, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendant has approached this Court by way of instant regular second appeal, against the judgments and decrees passed by the learned courts below, whereby suit for injunction filed by the plaintiff-respondent was decreed.

Brief facts of the case are that plaintiff-respondent, claiming himself as owner in possession of disputed property, detailed in plaint, as per jamabandi for the year 2004-05, was having *bonafide* apprehension of dispossession, at the hands of the defendant, by illegal means. His repeated requests made to the defendant fell on deaf ears, leaving him with no other option except to file the present suit for injunction.

Having been put to notice, defendant appeared through counsel on 13.6.2008. However, he failed to file the written statement, despite having been granted sufficient time. Accordingly, his defence was struck off by the learned trial Court vide order dated 13.6.2009. Plaintiff produced his documentary as well as oral evidence. Witnesses of the plaintiff were duly cross-examined by the learned counsel for the appellant-defendant.

After hearing the learned counsel for the parties and going

through the relevant record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case. Accordingly, his suit was decreed vide impugned judgment and decree dated 4.6.2012.

Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate court, by passing the impugned judgment and decree dated 13.1.2015. Hence this regular second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

During the course of hearing, when confronted as to whether the appellant ever moved any application for setting aside the order dated 13.6.2009, whereby defence of the defendant-appellant was struck off by the learned trial Court, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Once the order dated 13.6.2009, striking off defence of the defendant-appellant was never challenged and plaintiff duly proved his case, by leading documentary as well as oral evidence, the learned trial Court rightly decreed the suit of the plaintiff. Similarly, the learned first appellate court was well justified in dismissing the first appeal of the defendant-appellant. Having said that, this Court feels no hesitation to conclude that no fault can be found with the impugned judgments and decrees passed by the learned courts below and the same deserve to be upheld.

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **M/s Babbar Sewing Machine Company Vs. Trilok Nath Mahajan, 1978 PLJ 238** and judgments of this Court in **The Punjab State Vs. Kashmir Singh, 1998 (4) SCT 488** and **Snehlata Vs. Joginder Singh, 2010 (2) HLR 649** as well as

judgment of Himachal Pradesh High Court in **Brij Lal Vs. Rakesh Kumar and others, 2013 (8) RCR (Civil) 1611.**

The learned first appellate court, while reconsidering the entire case on facts as well as in law, recorded its cogent findings, before arriving at a just conclusion. The relevant findings recorded by the learned first appellate court, in paras 9 and 10 of its judgment, read as under:-

“Thereafter, it has been observed that evidently and admittedly the respondent-plaintiff has examined himself as PW1, who was duly cross-examined himself as PW1, who was duly cross-examined by the Ld. counsel for the appellant-defendant. Also, it is evident on the judicial file that appellant-defendant did not file written statement, despite appearance by his counsel on 13.06.2008. Resultantly, the defence of appellant-defendant was struck off, vide order dated 13.06.2009, after such a considerable period of about one year.

Further perusal given to the oral as well as documentary evidence available on the judicial file, including the document Ex.P1, copy of jamabandi for the year 2004-05 relied upon by the respondents-plaintiffs, it is evident that in column no.5 of cultivation as per entry of this document name of Heta son of Mangtu is mentioned in respect of the suit property, while as per head note of the plaint, Heta is not other than the father of respondent-plaintiff Hardwari Lal and the evidence led by the respondents-plaintiffs has not been rebutted by the appellant- defendant. Also, it is evident on the judicial file that the document Mark A site plan produced by the appellant-defendant before the Ld. Lower Court along with power of attorney, that opportunity to disprove the plea of respondents-plaintiffs was given and availed by the appellant-defendant before the Ld.Lower Court and moreover, it was a suit of permanent injunction, wherein title was not to be decided. Thus, the argument advanced by the Ld. Counsel for

the appellant-defendant is not tenable and so far as the citations relied upon by the learned counsel for the appellant-defendant referred to above are concerned, certainly there cannot be any dispute in those citations, however, those are not helpful to the appellant-defendant as the facts of the present case are not identical to those cases as referred.”

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, would show that each and every relevant aspect of the matter was duly examined, considered and appreciated in the correct perspective by the learned courts below, before recording their cogent findings. Under these circumstances, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Learned counsel for the appellant could not point out any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

8.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No