

CR-5247-2018

Date of Decision: 16.08.2018

Harbilas

.....Petitioner

versus

Balbir Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. S.P. Soi, Advocate
for the petitioner.**DEEPAK SIBAL, J. (ORAL)**

Through the present petition challenge is made to the order dated 13.03.2018 passed by the Civil Judge (Junior Division), Jalandhar (for short 'the Executing Court') through which the objections filed by the petitioner have been dismissed. Also under challenge is the order dated 24.07.2018 passed by the Additional District Judge, Jalandhar (for short 'the Appellate Court') dismissing the appeal of the petitioner filed against the above order of the Trial Court.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein permanent injunction to restrain the petitioner/defendant from interfering in her peaceful possession of the property detailed and described in the head note of the plaint (for short 'the suit property'). The case set up by the respondent/plaintiff was that she had entered into an oral agreement for the purchase of the suit property measuring 5 marlas with one Baksho and about 12 years ago she was delivered possession of the suit property. Thereafter, she raised construction on the same. Baksho on her behalf and also on behalf of her daughter, Sarabjit Kaur later executed a sale deed in favour of the respondent which was duly registered on 14.09.2006.

The petitioner after claiming to be the owner in possession of the suit

property started threatening her with dispossession leading to the filing of the suit. On being put to notice, the petitioner appeared before the Trial Court and denied the respondent's claim. The petitioner further submitted that it was he who was the owner and in possession of the suit property for the last about 25 years and during the course of such possession it is he who had raised construction on it.

The Trial Court after returning categorical finding in favour of the respondent with regard to her ownership and possession as also after holding that the petitioner had miserably failed to prove his possession over the suit property decreed to respondent's suit. The petitioner filed an appeal against the judgment and decree passed by the Trial Court, on the dismissal of which, he preferred a regular second appeal before this Court which met the same fate as his first appeal. No further challenge was made by him.

In the execution proceedings initiated by the respondents, it was claimed by her that after the dismissal of the petitioner's appeal by the Appellate Court, he had forcibly dispossessed the respondent and therefore, in terms of the decree, she was entitled to repossess the suit property. In response to such claim made by the respondent the petitioner sought to raise the same defense as had been raised by him in the main suit which was to the effect that it was he who was in possession of the suit property for the last over 25 years and therefore there was no question of him dispossessing the respondent from the suit property. The Executing Court considered and rejected the objections filed by the petitioner against which he had preferred an appeal before the Appellate Court which met the same fate, occasioning the filing of the present petition.

Learned counsel for the petitioner submits that the Executing Court erred in rejecting the petitioner's objections as it was he who was in possession of the suit property for the last over 25 years and therefore, in pursuance to the injunction decree he should have not been ordered to be dispossessed. He further submitted that the respondent had failed to give details as to when she was dispossessed at the hands of the petitioner. It is still further submitted that the respondent had not raised the ground of dispossession in the regular second appeal filed by the petitioner and therefore, she was precluded from taking such plea in the execution proceedings.

No merit is found in the afore submissions of the learned counsel.

The stand taken by the petitioner in the execution proceedings of him being in possession of the suit property for the last over 25 years was the same as taken by him during the course of the suit filed by the respondent. Such plea taken by the petitioner was considered and concurrently rejected by three Courts including this Court. That being so, he cannot be allowed to raise the same plea again especially in the execution proceedings and more particularly, when the revenue record which was entered after the aforesaid sale deed dated 14.09.2006 in favour of the respondent reflects therein the name of the respondent. Thus, the petitioner has rightly not been granted any relief by the Executing Court as also the Appellate Court. The submission made by learned counsel for the petitioner that the respondent had not raised the plea before this Court in the regular second appeal with regard to her being dispossessed after the

dismissal of the petitioner's first appeal is also not sustainable. A perusal of the order dated 14.02.2014 passed by this Court in RSA-2494-2018-Harbilas versus Balbir Kaur shows that though the appearance of learned counsel for Balbir Kaur is shown therein as a caveator, there was no occasion for him to make any submission as the petitioner's second appeal was dismissed in *limine* as this Court found no merit in the same.

The Trial Court, after framing issues and sifting the evidence led by both parties has accepted the respondent's case that she was dispossessed by the petitioner after the dismissal of his first appeal and resultantly ordered her to be put back in possession of the suit property. On appeal, the Appellate Court affirmed such findings of fact. No perversity in these concurrent findings is found warranting any interference.

Dismissed.

(DEEPAK SIBAL)
JUDGE

16.08.2018

Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No