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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision : 05.12.2018

Kuldip Singh

... Appellant

Versus

Amarjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate
for the appellant.

Respondents proceeded *ex parte*.

AMIT RAWAL, J.

The appellant-plaintiff is in the present regular second appeal against the concurrent findings of fact, whereby the suit for permanent injunction seeking restraint order against the defendants their servants and agents from interfering into peaceful possession, has been dismissed and affirmed by the lower Appellate Court.

It was alleged that the plaintiff had been in cultivating possession of the suit land as a tenant for number of years, which was taken on lease for the year 1984-85 for ₹1300/- per acre. The lease was taken from one Shrimati Bhajan Kaur widow of Tota Singh, through her power of attorney of Sital Singh/defendant No.1 and had sown the khariff crop. On demise of Bhajan Kaur, the defendants claiming themselves to be legal heirs, extended threat and therefore, a cause of action arose to file the suit.

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The defendant No.1 admitted the entire case of the plaintiff, whereas defendant Nos.2 to 5 opposed the suit and denied the allegations and status of the plaintiff to be of a tenant, rather stated that lease deed dated 01.04.1984 was of a result of sheer manipulation of plaintiff and his brother (defendant No.1). It was alleged that on demise of Bhajan Kaur, mutation was sanctioned in favour of defendant No.1 on 27.02.1985.

Since the parties were at variance, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the injunction prayed for?OPP
2. Relief.

Both the parties led extensive evidence.

The trial Court by examining the evidence declined the injunction by holding that the plaintiff failed to examine Baldev Singh, scribe of the lease deed for corroborating the version of attesting witness PW2. It was also noticed that since lease was for a period of one year, therefore, the contents of the lease deed could not be looked into for want of registration. As regards the possession, the trial Court found the khasra girdawari for the year 1981-82 and for kharif 1984-85, Bhajan Kaur was shown to be in cultivating possession and not the plaintiff. The appeal taken before the lower Appellate Court was also dismissed.

Mr. G.S. Punia, learned Senior Counsel assisted by Mr. P.S. Punia, learned counsel appearing on behalf of the appellant-plaintiff submitted that the status of the appellant-plaintiff was of a tenant and had established the possession of the suit property through khasra girdawaries.

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DW1 Amarjit Kaur, in her statement, stated that some land was lying vacant at the spot and she admitted the fact that respondent Nos.2 to 5 were not in possession, but it was of the appellant. Non-examination of the scribe cannot be a ground for denying the relief of injunction as for the simpliciter injunction, only possession has to be established.

As per the office report, the respondents have already been proceeded *ex parte*.

This Court while admitting the appeal passed the following order:-

"Present: G.S. Punia, Advocate.

Notice. Dispossession stayed meanwhile."

I have heard learned counsel for the appellant, appraised the paper book as well as records of the Courts below and of the view that there is a force and merit in the submissions of Mr. Punia.

The concurrent findings of fact and law, in my view, are not sustainable, for, the plaintiff had proved the possession evident from the khasra girdawaris for the year 1981-82, much less, execution of the lease deed through attesting witness-PW2. Injunction could not have been denied on account of non-examination of the scribe. Non-registration of the lease deed being for a period of one year, should not have been a ground to ignore, but for collateral purpose, could have been looked into. Respondent No.2, in cross-examination, admitted the existence of the lease deed. In such circumstances, the status of the appellant-plaintiff being a tenant for a limited purpose, would be of Holding Over. A person, who is in lawful possession or in long and settled possession, as per the *ratio decidendi*

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culled out by Hon'ble the Supreme Court in **"Rame Gowda (D) LRs V/s Mr. Varadappa Naidu (D) by LRs and another" 2004 (1) SCC 769**, cannot be dispossessed except in due course of law.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213"**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **"Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others" 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi 's case** (supra) reads thus:-

*"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled." [at paras 27 - 29] "*

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27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Keeping in view the aforementioned facts, the judgments and decrees of the Courts below are not sustainable in the eyes of law and the same are hereby set aside. Resultantly, the present regular second appeal is

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dismissed.

Interim order granted by this Court is made absolute.

However, this will not preclude the respondents-defendants to seek the ejectment in accordance with law.

05.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**