

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

520

RSA No.713 of 1998 (O & M)
Date of Decision:24.04.2018

Kesar Singh

...Appellant

Versus

Faqir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Singla, Advocate
for the appellant.

Mr. R.L. Batta, Senior Advocate with
Ms. Geeta Sharma, Advocate and
Mr. Amit Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while admitting the appeal. This Court vide order dated 30.03.1998, framed a question of law, which is extracted as under:-

“The substantial question of law that arises in this case is whether a suit for permanent injunction can be converted into a suit under Section 6 of The Specific Relief Act when the plaintiff has been dispossessed during the pendency of the suit.

Admit.

Status quo *in regard possession.*

Notice regarding say returnable by 5-5-1998.”

Before question of law is answered it would be necessary to notice facts. Sh. Tulsi Ram was owner of the property in dispute. Plaintiff-respondent-Fakir Singh was in possession of the property. Fakir Singh filed a suit against Tulsi Daas. Tulsi Daas appeared and suffered a statement admitting the possession of the plaintiff-respondent and stated that the plaintiff-respondent would not be dispossessed except in due course of law. It was further stated by Tulsi Daas that he had already filed a suit for possession against the plaintiff. Thus, the suit for injunction filed by the plaintiff-respondent was disposed of in view of the aforesaid statement. The statement of Tulsi Daas is Ex.P-5 on record. Tulsi Daas is stated to have sold the property in dispute in favour of defendants-appellants on 14.11.1991 and 15.11.1991 by two registered sale deeds. It is admitted fact on the record, plaintiff-respondent continued to be in possession. Plaintiff-respondent filed a suit for permanent injunction apprehending forcible dispossession from the defendants on 25.11.1991. However, it is alleged by the plaintiff during the pendency of the suit for injunction, he was forcibly dispossessed on 15.04.1992. Plaintiff filed an application praying for amendment of the suit and sought relief of restoration of possession vide application dated 08.05.1992. Application for amendment came to be allowed on 11.12.1992 and consequently application filed on 16.01.1993 was also allowed. Defendants-appellants have contested the suit on the ground that in fact the plaintiff had abandoned the possession and, therefore, they entered into possession of the property. Both the Courts have found that in fact, the plaintiff was dispossessed on 15.04.1992.

Now the stage is set for question of law as framed at the time of

suit for possession under Section 6 of The Specific Relief Act. It is the case of the plaintiff that he had been dispossessed during pendency of the suit. The plaintiff sought additional relief of possession.

In such circumstances, it is not prudent to hold that injunction suit has been converted into a suit for possession. In any case, there is no bar in seeking additional relief, which has arisen during the pendency of the suit. Hence, in the considered opinion of this Court, questions of law which has been framed at the time of admission does not arise.

Learned counsel for the appellant has vehemently argued that the suit filed by the plaintiff under Section 6 of the Specific Relief Act was barred by time as the plaintiff is alleged to have been forcibly dispossessed on 15.04.1992, whereas amended plaint was filed on 16.01.1993 and the suit for relief of restoration of possession under Section 6 of the Specific Relief Act can only be filed within a period of 6 months from the date of his possession.

It is not in dispute that the application for amendment was filed on 08.05.1992. Thus, the application was filed seeking amendment of the plaint within 23 days from the date of alleged dispossession. The amended plaint could only be filed once the amendment was allowed. In these circumstances, it cannot be said that the suit filed by the plaintiff was beyond the period of 6 months as is being asserted by the learned counsel for the defendant-appellant.

This issue can be examined even from a different angle. Here is a case where concurrent finding of fact has been arrived that the plaintiff was dispossessed during the pendency of the suit. It is always competent for the Court to take notice of the subsequent events and mould the relief.

Still further, once an application for amendment has been allowed and plaint has been permitted to be amended in the absence of any order to the contrary then the plaint would relate back normally to the date of filing of the suit. Hence, this Court does not find any substance in the arguments of learned counsel for the appellant.

In view of the discussion made, there is no ground to interfere in the concurrent findings of fact arrived at by the Courts below.

Regular second appeal is dismissed.

24.04.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No