

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

RSA No.77 of 1998 (O&M)
Date of decision : 19.12.2018

Kishan Chand

...Appellant

Versus

Parakash Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Rupinder K. Thind, Advocate for the appellant.

Mr. Ajay Jain, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Both the Courts on appreciation of the evidence have found that the plaintiff is owner of the property and in fact ownership of the plaintiff is not disputed by defendant No.1, who is divorced wife of the plaintiff.

The plaintiff filed a suit for mandatory injunction praying for restoration of possession against his wife and her paramour.

Defendant No.1 filed a written statement admitting that she is a divorced wife but she denied other allegations. She claimed that she is continuing in possession of the property as she was in possession before divorce.

Both the Courts on appreciation of the evidence have found that the suit for mandatory injunction is not maintainable and the plaintiff is entitled to file a suit for possession.

During the pendency of the appeal, an application under Order 6 Rule 17 CPC was filed by the plaintiff seeking amendment in the prayer clause of the plaint seeking possession. Notice of the application was given to the counsel opposite vide order dated 15.07.1998 but no reply has been filed.

Be that as it may, after the grant of divorce, defendant No.1-respondent herein does not claim any right, title or interest in the property. After decree of divorce which is undisputed and became final, the possession of defendant No.1 is permissive. Once possession of defendant No.1 is permissive, the suit filed for mandatory injunction is very much maintainable. This aspect has been examined in detail in judgment passed by Bombay High Court in the case of **Conrad Dias of Bombay Vs. Joseph Dias of Bombay, AIR 1995 (Bombay) 210.**

In view of the detailed reasons given, even if an application for amendment is not to be considered, still the suit is maintainable.

In view of the above, judgments passed by both the Courts below are set aside.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

19.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No