

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

RSA No.3128 of 2004 (O&M)

Date of decision: 05.09.2018

M/s B.S. Contractor

... Appellant

Vs.

Bishan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jai Bhagwan, Advocate
for the appellant.

Mr. Prateek Mahajan, Advocate
for the respondent.

AMIT RAWAL J.(Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for permanent injunction seeking restraint order against the defendant from forcible interference into functioning with regard to the construction having been undertaken, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

The aforementioned suit was filed on the premise that the plaintiff-firm running its business under the name and style M/s B.S. Contractor and defendant had been partner of the firm but thereafter, he relinquished his share in favour of the plaintiff and thus, the plaintiff had become the proprietor of the firm. On 22.02.1996, the partnership deed was

executed between Harbhajan Singh Saini and defendant Bishan Singh, whereby, it was mutually agreed to run partnership business. As per the terms of the partnership deed, it was the appellant who was to conduct the entire business on behalf of the said firm and his share was 90% whereas the share of the respondent was 10%. Thereafter, 10% share was also relinquished by the respondent in favour of the appellant-plaintiff and appellant-plaintiff became sole proprietor. Defendant executed a Power of Attorney on 22.02.1996 in favour of Harbhajan Singh Saini. He further executed documents in the shape of undertaking, whereby, he executed a document in favour of Harbhajan Singh Saini. The agreement to sell dated 2.3.1996 was executed between the parties. Defendant also executed a receipt in favour of the plaintiff, whereby, he received a sum of ₹20,000/- partly by way of cash payment and further cheque to the tune of ₹9500/-. On the basis of the aforementioned documents, Harbhajan Singh Saini became proprietor of the plaintiff-firm.

In this process, Harbhajan Singh Saini being proprietor of the firm had undertaken the task of obtaining contract from the various Government department and as well as semi Government institutions. The intention of the defendant became bad and started threatening that he would issue a letter with regard to the cancellation of Power of Attorney and thus, wanted to interfere into possession and interrupted the ongoing construction.

The suit was contested by the defendant by raising various

preliminary objections with regard to maintainability and possession of the plaintiff was emphatically denied. It was stated that Power of Attorney was cancelled on 22.06.1997 and a registered notice in this regard was also sent to the plaintiff.

The trial Court on the basis of evidence brought on record dismissed the suit and so did the Lower Appellate Court.

Mr. Jai Bhagwan, learned counsel appearing on behalf of the appellant submits that the documentary evidence has been placed on record not only to establish the ownership but also possession. A person who has been found to be in long and settled possession cannot be dispossessed except in due course of law, thus, both the Courts below have abdicated in rendering the findings. One line in cross-examination here and there with regard to possession cannot be taken against the plaintiff *vis-a-vis* factum of cancellation of Power of Attorney, thus, judgments and decrees of the Courts below are liable to be set aside.

Mr. Prateek Mahajan, learned counsel appearing on behalf of the respondents submits that concurrent findings of facts and law cannot be interfered with until and unless there is gross illegality and perversity. The appellant has not come to the Court with clean hands as PW8 – Harbhajan Singh Saini in cross-examination admitted the factum of cancellation of Power of Attorney and thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the

view that there is no force and merit in the submissions of Mr. Jai Bhagwan.

The parameters for granting injunction are no longer *res integra*. In order to reach on such platform, not only the bald statement with regard to possession but the power given in view of the Power of Attorney has to be established. PW8 plaintiff when appeared in witness box, to a specific question candidly admitted the factum of cancellation of Power of Attorney. In such circumstances, the Court below had no occasion but to accept the contention of plaintiff that he had continued to work on the basis of Power of Attorney. Even this Court, while admitting the appeal did not grant any status quo.

As an upshot of my findings, arguments of Mr. Bhagwan have not been able to bring the case within the realm of illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

September 05, 2018
savita

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