

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

**RSA No.3156 of 2013 (O&M)
Date of decision:30.05.2018**

Baksho ... Appellant
Vs.

Balbir Chand and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Sandhir, Advocate
for the appellant.

Mr. Sandeep Jain, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

C.M.No.8416-C of 2013

For the reasons stated in the application which is duly supported by an affidavit, delay of 95 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3156 of 2013 (O&M)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 21.04.2012, whereby, appeal of the respondent-defendants has been allowed by setting aside the judgment and decree of the trial Court.

Mr. V.K.Sandhir, learned counsel appearing on behalf of the appellant-plaintiff submits that Lower Appellate Court has committed illegality and perversity in reversing the well reasoned judgment and decree

of the trial Court, for, the defendants have not been able to prove the exclusive possession. A true owner did not have power to dispossess the trespasser, if he had been able to establish the continuous possession. The possession should have been ordered to be maintained leaving parties to seek partition of the suit property. The statement of DW-1/Balbir Chand has not been looked into correct perspective, for, he deposed that after the death of his father Kabal Ram, his estate was inherited by Parkash Kaur-his widow, Banso-his daughter and by himself by virtue of sale deed dated 8.11.2004. Parkash Kaur and Banso sold their respective share in his favour and thereafter, he raised substantial construction over the property in dispute as Kashmiri Lal husband of plaintiff had never been in possession of any part of the property in dispute and thus, urges this Court for setting aside the findings under challenge.

Mr. Sandeep Jain, learned counsel appearing on behalf of respondent No.1 submits that appellant-plaintiff filed the suit on 30.01.2007, whereas, Balbir Chand, respondent No.1 herein instituted the civil suit No.583 of 2011 on 28.05.2007 seeking separate possession and partition by metes and bounds. The aforementioned suit was decided, vide judgment and decree dated 02.04.2012, whereby, a preliminary decree has been passed and the appeal laid before the Lower Appellate Court by the plaintiff has been dismissed and Regular Second Appeal is stated to be pending adjudication. A copy of judgment and decree dated 02.04.2012 has been produced in Court today which is taken on record.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sandhir, for, the plaintiff has not been able to prove the exclusive possession in a suit for permanent injunction against the true owner, particularly when preliminary decree had been passed and attained finality upto the Lower Appellate Court.

No ground is made out for interference in the judgment and decree of the Lower Appellate Court.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 30, 2018
savita

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