

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

RSA No.2416 of 2016 (O&M)
Date of decision: 30th April, 2018

Pt. Gogi alias Sanjeev Kumar

... Appellant

Versus

Krishana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Parvinder Singh, Advocate for the appellant.

FATEH DEEP SINGH, J.

In this regular second appeal, the appellant Pt. Gogi alias Sanjeev Kumar has laid challenge to judgment dated 23.11.2015 of the Court of learned District Judge, Shaheed Bhagat Singh Nagar whereby appeal of the present appellant stood dismissed upholding the findings dated 09.09.2014 of the Court of learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar whereby suit of the plaintiff was decreed and the defendants (now appellant) were restrained from interfering into the possession of the plaintiff and dispossessing her forcibly from the house in question.

Heard Mr. Parvinder Singh, Advocate for the appellant and perused the records of the case.

Krishana, a widow, filed the suit for permanent injunction on the grounds that she is owner in possession of the property residing therein for the last more than 40 years which is ancestral house of the

plaintiff and was earlier owned by her father-in-law after whom she has come into possession of the same through natural succession being widow of her husband Avtar Singh. The stand of the defendants besides usual preliminary objections is admitting possession of the plaintiff but denied her claim that she was owner in possession and rather claimed that she had no right, title or interest in the same. On the basis of the pleadings, trial Court framed issues which are as follows:

1. Whether the defendants are interfering in the lawful possession of the plaintiff to which they have no right?
OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has got no locus standi to file the present suit? OPD
5. Whether the plaintiff is barred by her act and conduct to file the present suit? OPD
6. Relief.

It was held by the courts below that the plaintiff was in exclusive possession of the property and thus, could not be dispossessed.

Appreciating the submissions of learned counsel for the appellant Mr.Parvinder Singh, Advocate, going through the own stand with which learned counsel for the appellant was also confronted by this

Court, in their written statement the defendants had admitted possession of the plaintiff in the property in question which is a dwelling unit and further it was observed even by the learned first appellate Court that in such a suit simplicitor for permanent injunction, possession of a party is required to be ascertained and which is admitted stand of the defendants (now appellant) as to the possession of the plaintiff, though they have sought to take a plea that two rooms were given to the husband of the plaintiff as a licensee whereas possession of other two rooms was illegally taken by Avtar Singh. Thus, even by such a stand of the defendants on admission, since it is well settled proposition of law that in a simplicitor suit for permanent injunction, courts are not supposed to ascertain title and once possession is admitted by the defendants in pleadings and so in the testimonies of their witnesses, leaves no scope but to hold that plaintiff cannot be dispossessed illegally by any means except in due course of law. Thus, no infirmity can be found with the findings of the learned courts below which are consistent in their approach and legally justified. The appeal being hopelessly without any merit stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

April 30, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No