

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

RSA No.2963 of 2016 (O&M)

Date of decision : 11.05.2018

Jagdish Kumar

...Appellant

Versus

Surjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. O.P. Goyal, Sr. Advocate with
Mr. Naveen Sharma, Advocate and
Ms. Deepshikha, Advocate for the appellant.

ANIL KSHETARPAL, J.

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

The plaintiff claiming to be the owner and having raised construction of the building, sought relief of possession on the ground that he has been forcibly dispossessed. It is the case of the plaintiff that previously late Smt. Ranjit Kaur was in possession of the property with the consent of the plaintiff and she died on 25.12.2004 and thereafter the plaintiff occupied the property and he has been forcibly dispossessed in January, 2005.

The defendant contested the suit and pleaded that the plaintiff was never in possession of the property and the plaintiff got installed electric connection in his name, bills whereof are being paid by the

defendant and prior to them by Late Smt. Ranjit Kaur.

On examination of the pleadings, learned trial Court framed the issues vide order dated 22.08.2005, which are extracted as under:-

- “1. *Whether the plaintiff is owner of the property in dispute if (and) whether is entitled to possession of the same? OPP*
2. *Whether the suit is not maintainable in the present form?OPD*
3. *Whether the suit is beyond limitation? OPD*
4. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
5. *Relief.”*

The parties led their evidence and after the trial of the case, the suit filed by the plaintiff was dismissed. Even the first appeal filed by the plaintiff-appellant was dismissed after re-appreciation of the evidence.

Learned Senior Counsel for the appellant has submitted that the plaintiff had only filed a suit for restoration of the possession under Section 6 of the Specific Relief Act and, therefore, the issue of title could not be gone into by the Courts below. He has further submitted that the possession of the plaintiff after the death of Late Smt. Ranjit Kaur is proved from the oral evidence which has not been challenged in the cross-examination. He has further submitted that the electric connection in the name of the plaintiff-appellant is installed in the property and, therefore, at one time, the possession of the appellant is proved.

As noticed above, the issues were framed on 22.08.2005. It is not in dispute that the plaintiff never objected to the fact that the suit filed should not be tried as a regular suit. The plaintiff led his evidence and

thereafter the judgment was passed by the trial Court. In the considered opinion of this Court, once the Court has already examined the issue of title on the basis of the evidence led by the parties, it is too late to submit that the issue of title could not be gone into by the Courts below. Still further, late Smt. Ranjit Kaur was admittedly in possession of the property upto her death i.e. 25.12.2004. The plaintiff claims that he remained in possession of the property for few days, when he was forcibly dispossessed. The plaintiff during evidence has admitted that the receipts of the electricity bills showing the payment of the electricity consumption has been produced by the defendant. In the considered opinion of this Court, in view of the aforesaid evidence, possession of the plaintiff is not proved. The plaintiff has not led any evidence to prove that he had ever raised construction over the property in dispute. The plaintiff did not lead any evidence to prove that he has any right, title or interest in the property.

The arguments of the learned counsel for the appellant that the statement of the plaintiff has not been challenged in cross-examination with respect to forcible dispossession, hence the Courts have committed error in dismissing the suit. This Court has considered the submissions, however, do not find any substance therein. The plaintiff has been thoroughly cross-examined on various aspects at length. However, there was no cross-examination on this pointed statement of the plaintiff in chief. But at the same time, the Court is to examine the entire evidence available on the file. The plaintiff in his evidence has admitted that he has no document of title. The plaintiff filed the present suit claiming to be the owner of the property. In absence of any evidence of ownership, the plaintiff cannot succeed in the

suit.

In view of the aforesaid finding, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

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

11.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No