

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

RSA No.3749 of 2016 (O&M)

Date of decision:27.11.2018

Inderjeet Singh

... Appellant

Vs.

Hardev Singh

... Respondent

RSA No.4406 of 2013 (O&M)

Inderjeet

... Appellant

Vs.

Hardev Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

Mr. Malkeet Singh, Advocate
for the respondent in RSA No.4406 of 2013

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.3749 of 2016 against the judgment and decree of the Lower Appellate Court, whereby, mesne profit sought by the plaintiff rejected by the trial Court, has been allowed and 4406 of 2013 against the concurrent findings of facts and law, whereby, suit of the plaintiff for possession of the suit land, has been decreed.

The respondent-plaintiff claimed the possession of the suit property on the basis of ownership. It was alleged that owing to his absence from the suit property, defendant three years before filing of the suit in November 2006, had forcibly taken the possession and had been carrying out the business and in another suit claimed the mesne profit.

The appellant-defendant opposed the suit by denying the status of tress passer and propounded tenancy by placing on record copy of rent note, Ex.D1 allegedly signed by one Yadwinder Singh.

Mr. Akshay Bhan, learned Senior counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the appellant submitted that suit for possession filed in 2006 was barred by law of limitation, for, it has been proved on record the possession of the appellant-defendant since 1990, through documentary evidence brought on record by way of additional evidence i.e. loan documents of the nationalized bank. In such circumstances, the suit for possession in the absence of relief of ejectment, was not maintainable. The plaintiff had to stand on his own legs to belie the status of defendant as tenant. The limitation to claim possession as per Article 65 of the Limitation Act, is 12 years. In a suit claiming mesne profit, the findings of possession since 1990 had not been assailed. In such circumstances, the decree of possession could not have been passed. The rent note has been mis-interpreted as Yadwinder Singh is none else but son of Hardev Singh-plaintiff.

Mr. Malkeet Singh, learned counsel for the respondent (in RSA No.4406 of 2013) submitted that it was incumbent upon the defendant to

establish the alleged tenancy. In the absence of rent note Ex.D1, the possession cannot be said to be authorised. There is no illegality and perversity in the findings qua possession. The mesne profit has been confined at the rate of Rs.2600/- per month, w.e.f 1.11.2003. The official of the Bank had filled up the loan document on the self serving statement of the tenant, therefore, the year 1990 would not be reckoning date for the purpose of the limitation and thus, urged this Court for upholding the findings under challenge.

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. Bhan, for, it is settled law that mere assertion in the written statement in the absence of specific denial, cannot be admitted, if not backed by an evidence. The defendant has failed to establish the status of tenant by proving the payment of rent or statement of account, much less the computation sheet. Yadwinder Singh son of the plaintiff did not have the authority to enter into rent agreement. Even if such document, for a minute, is taken into consideration, it is not believable that as ancillary the said tenant would not pay the rent without any protest. The alleged possession of 1990 in view of aforementioned cannot be counted for the purpose of limitation. On the other hand, plaintiff established the ownership on the suit property and in the absence of any tenancy, the possession of the defendant has rightly been said to be un-authorised.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based

upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 27, 2018
savita

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