IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.40 of 2016
Date of decision:15.05.2018

Raghbir Singh @ Bira and another ... Appellants

Vs.

Gurdev Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nitin Kant Setia, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the dismissal of the suit for permanent injunction restraining the defendants from demolition of Dharmshala and Temple (Mandir) on the premise that they had been in possession of the suit property since long.

The suit aforementioned was filed under Order 1 Rule 8 of Code of Civil Procedure. It was alleged that one Jia Lal @ Jai Lal was the owner of the property comprised in khasra no.1205 min. He succeeded in suit for possession and decree of possession has been awarded but the execution petition was dismissed in default, thus, he lost right to get the possession, whereas, defendants attempted to demolish Dharmshala and Temple (mandir), thus, cause of action accrued to file the suit.

The suit was contested by the defendants on the premise that

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they had become the owners of the suit property, vide sale deed dated 04.08.1998 and the earlier suit filed by the similarly situated plaintiffs was already pending adjudication, therefore, second suit on the same cause of action was not maintainable, for, it was an attempt to bye-pass the order rejecting injunction in the previous suit. Both the Courts below did not agree with the evidence and pleadings of the plaintiffs, therefore, the trial Court dismissed the suit and the Lower Appellate Court affirmed the same.

Mr. Nitin Kant Setia, learned counsel appearing on behalf of the appellant-plaintiffs submits that both the Courts below arrived at findings of facts, for, Jia Lal had lost the right to seek possession of the property, whereas, number of documentary evidence brought on record to establish the possession of the plaintiffs, much less existence of Dharamshala and Temple, thus, prayed for interference under Section 100 of Code of Civil Procedure read with Section 41 of Punjab Courts Act, 1918.

I have heard the learned counsel for the appellant-plaintiffs, 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. Setia.

Concededly, similarly situated plaintiffs had filed the suit for injunction which was pending adjudication but the interim injunction sought was declined. PW1-Raghbir Singh when appeared in the witness box stated that he was not in possession of the suit property. On the contrary, the defendants have been able to prove the ownership, much less possession of the suit property.

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The findings of the Courts below based upon the appreciation of oral and documentary evidence, much less arguments of Mr. Setia, have not been able to bring the case within the expression illegality and perversity enabling this Court to form a different opinion than the one arrived at by the Courts below, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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