

RSA No. 5185 of 2016
Date of Decision: 17.9.2018

Om Parkash

---Appellant

versus

Vijay Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sandeep Arora, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery of Rs. 1,00,000/- on account of damages and future interest @ 12% per annum till the date of recovery due to the defendants having filed suit for mandatory injunction titled “Vijay Kumar vs. Roop Lal” directing the plaintiff and his brother to vacate the house in question, on the premise that the appellant has suffered mental agony and harassment due to false plea raised by the defendants, was dismissed by the trial court by relying upon judgment of Hon'ble the Supreme Court **West Bengal State Electricity Board vs. Dalip Kumar Ray 2007(2) S.L.R. 814** wherein there is reference to the earlier judgment of Hon'ble the Supreme Court **S.R.Venkataraman vs. Union of India AIR 1979 SC 49**. The appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Jalandhar.

The sole submission made by counsel for the appellant is that the appellant and his brother Roop Lal (since deceased) instituted civil

suit for specific performance of agreement of sale dated 6.7.1993 executed by Bal Krishan, father of respondents No. 1 to 4 pertaining to property bearing No. E.P. 30, Mohalla Khodian, Tehsil and District Jalandhar. The respondents/defendants instituted suit against the plaintiff and his brother for mandatory injunction, noticed hereinbefore. It is argued that as the appellant suffered mental agony and harassment besides cost of litigation due to false suit having been filed by the respondents-defendants, appellant is entitled to damages for malicious prosecution.

I have gone through the judgments passed by the courts wherein the courts, on a detailed consideration as to what malicious prosecution constitutes and by relying upon judgment of Hon'ble the Supreme Court, has rightly held that the appellant has failed to prove malice on the part of respondents-defendants in order to accept plea that he is entitled to damages for malicious prosecution. I do not find any reason to differ with the findings recorded by the courts as the same do not suffer from perversity much less raise a question of law that needs determination after notice to the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

17.9.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No