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

**RSA-6216-2016 (O&M)
Date of decision : 29.11.2018**

Puran Giri

... Appellant

Versus

Joginder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manuj Nagrath, Advocate
for the appellant.

AMIT RAWAL, J.

CM-16342-C-2016

For the reasons stated in the application, the delay of 15 days in
refiling the appeal is condoned.

CM stands disposed of.

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The appellant-defendant No.1 is in the present regular second
appeal against the concurrent findings of fact, whereby the suit for
injunction preferred by the plaintiff qua forcible interference and
dispossession, has been decreed by both the Courts below, by rejecting the
counter-claim seeking ejectment.

The plaintiff claimed that he had been in possession of the land
in respect of Khasra No.1766 measuring 1 marla since long and had
constructed a shop and had been running the business in the name and style

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of M/s Joginder Enterprises. The defendants extended the threat of forcible dispossession, thus, in this background of the matter, the suit aforementioned was filed.

Defendant No.1 branded the possession of the plaintiff as licensee and sought the ejectment by setting up the counter-claim. Jamabandi brought on record reflects that the property belonged to the panchayat deh and defendant No.2 was the licensee of the panchayat. Concededly, defendant No.2 died during the pendency of the appeal and his LRs were not brought on record. It is also pertinent to mention here that no counter-claim was set up on behalf of defendant No.2.

Learned counsel appearing on behalf of the appellant-defendant No.1 submitted that both the Courts below have abdicated in not assigning any reasons, much less, cogent reasons for dismissing the counter-claim. The plaintiff miserably failed to prove the possession. Injunction, in such circumstances, should not be granted. Non-impleadment of LRs of defendant No.2, much less, non-set up of the counter-claim would not render the counter-claim as infructuous.

I am afraid the aforementioned argument is not sustainable as concededly, defendant No.1 was not the licensee. It was defendant No.2, who was the licensee of the panchayat deh. Licensee cannot further, in the absence of any grant or permission, induct the plaintiff as licensee. Filing of the counter-claim itself established the possession of the plaintiff. The possession, even if it is un-authorized, but long and settled, cannot be interrupted except in due course of law. The aforementioned finding of mine is drawn from the *ratio decidendi* culled out by the Hon'ble Supreme Court in "**Rame Gowda (D) by LRs V/s M. Varadappa Naidu (D) by LRs**

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and Anr. 2004 (1) SCC 769"

This Court called upon Mr. Nagrath to apprise this Court with regard to the ownership of the land. On examination of the jamabandi (Ex.D-5), it was found that under the column of ownership, it is panchayat deh. In the absence of any grant by original licensee, subsequent licensee cannot be branded as a licensee. However, since defendant No.2 had not set up counter-claim being a licensee of panchayat deh, neither defendant No.2 or panchayat is not precluded from claiming the possession in accordance with law, but the possession cannot be forcibly taken away.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Nagrath to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

29.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**