

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

RSA No.1624 of 2017 (O&M)
Decided on:-January 15, 2018.

Hanif.

.....Appellant.

Versus

Ali Hassan.

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. R.S. Mamli, Advocate
 for the appellant.

HARI PAL VERMA, J.

CM-3911-C-2017

Prayer in this application filed under Section 151 CPC is for condonation of delay of 24 days in re-filing the present regular second appeal.

For the reasons stated in the application, the same is allowed and the delay of 24 days in re-filing the instant appeal is condoned.

RSA No.1624 of 2017

The appellant-plaintiff has filed the present regular second appeal against the judgment and decree dated 18.10.2016 passed by learned District Judge, Yamuna Nagar at Jagadhri, whereby his appeal against the judgment and decree dated 21.04.2015 passed by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, was dismissed.

Briefly stated, the appellant-plaintiff had filed a suit for permanent injunction to restrain the respondent-defendant from interfering in

his peaceful possession over residential house measuring 36'x37' marked as ABCD, as fully detailed and described in the head note of the plaint and situated in Ward No.11, Mohalla Patakpora, Near Beed Wali Masjid, Buria, Tehsil Jagadhri, District Yamuna Nagar. Further relief for restraining the defendant from forcibly dispossessing the plaintiff from the house in dispute, in any manner, whatsoever, was also claimed.

It is the case of the plaintiff that his father Karimu Deen had constructed the house in dispute and after his death, the plaintiff became owner in possession of the same. Hanifa daughter of Karimu Deen i.e. real sister of the plaintiff was married at village Dayalgarh, but after the sudden death of her husband, the plaintiff had got her Nikah with defendant Ali Hassan. However, no child was born out of this wedlock. After the Nikah, the plaintiff had given the permissive possession of the house in dispute to his sister Hanifa and defendant Ali Hassan and both of them are residing there.

It has further been pleaded that after the death of Hanifa, the defendant had left village Buria and shifted to his village in the State of Uttarakhand. In this manner, after the death of Hanifa, the plaintiff has been residing in the house in dispute along with his family. However, now the defendant has come back to village Buria and started living in Fazululum Madarsa and started claiming his right over the house in dispute. He has also started threatening to interfere in the actual and peaceful possession of the plaintiff, which necessitated the plaintiff to file the present suit.

The respondent-defendant filed written statement taking various preliminary objections including maintainability of suit, locus standi and concealment of true and material facts. The averments made by the plaintiff

were denied and it was pleaded that it is the defendant, who is in possession of the house in dispute. The plaintiff is resident of village Jaraon Majra. After the death of the wife of the defendant, he (defendant) allowed the plaintiff to live with him with a view that the plaintiff would be a support to him, but now the plaintiff, with an intent to grab the house in dispute, has filed the present suit against the defendant, who is more than 75 years old and is in bad health. It has been denied that the defendant had ever left village Buria after the death of his wife and shifted to a village in Uttarakhand.

On the basis of pleadings of the parties, the civil Court formulated the following issues:

1. Whether plaintiff is entitled for a decree for permanent injunction in respect of the property as fully detailed and described in the head note of the plaint as prayed? OPP
2. Whether the present suit is not maintainable? OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Relief.

Vide judgment and decree dated 21.04.2015, learned civil Court has held that the plaintiff is not entitled for the decree of permanent injunction against the defendant, who is in possession of the suit property and consequently, dismissed the suit filed by the plaintiff.

Aggrieved against the aforesaid judgment and decree dated 21.04.2015 passed by the civil Court, the appellant-plaintiff preferred an appeal before the lower appellate Court. But the appeal was also dismissed by learned District Judge, Yamuna Nagar at Jagadhri vide judgment and decree dated 18.10.2016, and affirmed the findings recorded by the civil Court.

Still aggrieved, the appellant-plaintiff has filed the present regular second appeal.

Following law points have been raised by the appellant-plaintiff:

- i. Whether the judgment and decrees passed by the learned Courts below are based on misreading the facts of the case and evidence produced on record?
- ii. Whether the admission made by the defendant is sufficient to prove the case against the defendant?
- iii. Whether the defendant admitted the possession of the plaintiff?
- iv. Whether the suit for permanent injunction can be decreed?

Learned counsel for the appellant-plaintiff has argued that before her death, Hanifa, who was sister of the appellant, fell ill and called the plaintiff and handed over possession of the house in dispute to him. Thereafter, the plaintiff started residing in the house in dispute. The sister of the plaintiff had died after a week and after her death, the defendant had left village Buria and shifted to his native village in Uttarakhand. Since the time of death of Hanifa, the plaintiff is residing in the house in dispute, whereas the defendant is residing in Uttarakhand. Therefore, suit filed by the plaintiff was liable to be decreed as prayed.

He has referred to the statement of respondent-defendant Ali Hassan to contend that in his cross-examination, he has stated that the plaintiff has not purchased any property in Buria and admitted that he has kept the plaintiff and his wife with him. Therefore, from the statement of the defendant, it is clear that the plaintiff is staying in the house in dispute. Even the ration card, bills receipts of the municipal corporation, Aadhar card of the

appellant and various other documents, which are exhibited as Ex.P1 to P9, are sufficient to prove that the plaintiff is staying in the house in dispute.

I have heard learned counsel for the appellant-plaintiff.

Both the Courts below have returned a concurrent finding of fact against the appellant-plaintiff. The plaintiff has not produced any evidence to establish his inheritance of ownership over the house in dispute from his father and no other document of ownership regarding his title has been produced. Merely because the ration card or Aadhar card etc. have been issued on the given address are not sufficient to prove ownership of the plaintiff. Rather, the admitted case of the plaintiff is that he is in possession of the house in dispute as the defendant had permitted him to live in the house with his family to look after the defendant after the death of his wife.

Interestingly, while facing the cross-examination, the appellant-plaintiff has admitted that the document i.e. municipal committee record pertaining to electricity meter etc. are procured by him during pendency of the suit, whereas the defendant has also tendered in his evidence the electricity bill and the house tax record to establish his possession over the house in dispute. The mere plea that the plaintiff had come to the house of the defendant before the death of his sister Hanifa, or he was brought by the defendant after her death, is not sufficient to establish that the plaintiff is owner in possession of the house in dispute. The defendant is claiming ownership of the house in dispute on the basis of possession and ownership of his wife Hanifa. The house in dispute was given to Hanifa by her father. Merely because the defendant had allowed the plaintiff to stay in the house in dispute, does not mean that the defendant is out of possession. Since the

plaintiff has failed to establish even the ownership of his father of the house in dispute, the main issue No.1 was rightly answered by the civil Court against the plaintiff and in favour of the defendant. The appeal filed by the plaintiff has rightly been dismissed by learned lower appellate Court. Therefore, there is no illegality in the concurrent finding of facts recorded by the Courts below.

No other point was argued.

Since the controversy involved in the case has duly been considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Thus, affirming the judgment and decree dated 21.04.2015 passed by the civil Court as well as the judgment and decree dated 18.10.2016 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

January 15, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No