

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

RSA 3294 of 2017 (O&M)
Date of decision: 16.10.2018

Som Dutt

.....Appellant

versus

Lila Ram and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Varun Gupta, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for perpetual injunction restraining the respondents/defendants from invading continual possession of the appellant/plaintiff over the single storied dwelling unit (*chaubara*) shown in red colour in alphabets 'ABCD' with boundaries, detailed in head-note of the plaint by claiming himself to be the owner and in possession of the same was partly decreed by the trial Court by restraining the respondents/defendants from invading the possession and use of ground floor structure whereas claim qua *chaubara* in question was dismissed. The judgment and decree passed by the trial Court became subject matter of appeal preferred by the plaintiff/appellant but the same was dismissed on 09.08.2016.

Counsel for the appellant/plaintiff would urge that the plaintiff/appellant has claimed himself to be the owner and in possession of

chaubara in question on the basis of family settlement dated 01.01.1998 but he is not in possession of any document of title in regard to the said *chaubara*. On the contrary, the respondents/defendants have relied upon agreement to sell dated 25.11.1998 for sale consideration of Rs.15,000.00 on the basis whereof, a sum of Rs.14,000.00 was paid to the appellant/plaintiff and possession of *chaubara* in question was handed over by the appellant to Khuba Ram - defendant No. 2 at the time of execution of agreement to sell Ex.DW1/B. It is vehemently argued that defendant No. 2 has miserably failed to establish his plea with regard to his having entered into agreement to sell and delivery of possession. It is further argued that as a matter of fact, the defendants have forcibly taken possession of *chaubara* in question during pendency of suit and a decree for restoration of possession of *chaubara* may be passed in favour of the plaintiff/appellant.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned and a copy of site plan describing the suit property.

Perusal of the site plan would reveal that the property which is marked 'ABCD' is part of ground floor consisting of one room and kitchen whereas on the first floor, a *chaubara* has been shown but the same is not marked as such. The Courts have failed to appreciate that the appellant/plaintiff has not sought any injunction with regard to area on the ground floor marked as 'ABCD' in the site plan. On the contrary, he has sought an injunction only qua *chaubara* on the first floor. With regard to *chaubara* in question, the Courts have consistently held that the

appellant/plaintiff has failed to substantiate his plea with regard to his ownership of the said *chaubara*. The appellant, during course of evidence sought to raise a plea that during pendency of suit, the defendants have forcibly taken over possession of *chaubara* in question. Perusal of affidavit filed by the appellant by way examination-in-chief would reveal that no date, month and year has been mentioned as to when the defendants have forcibly taken possession of *chaubara* after institution of suit in October 2011 that came to be decided by the trial Court on 06.10.2015.

Counsel for the appellant has failed to point out any material on record whereby he ever raised any protest either before the trial Court or before any other authority with regard to defendants having forcibly taken possession of *chaubara* during pendency of suit. The plaintiff/appellant did not file an application either for amendment of plaint or seeking relief of mandatory injunction directing the defendants to restore possession of *chaubara* in question. In this view of the matter, I find it difficult to accept contention of the appellant that he was in possession of *chaubara* in question prior to institution of suit and has been dispossessed during pendency of suit. As a necessary inference, the defendants are held to be in possession of *chaubara* in question prior to institution of suit, therefore, the plaintiff cannot maintain his plea for getting equitable and discretionary relief of injunction against interference in his possession qua *chaubara* in question.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. However, nothing stated here-in-before shall cause prejudice to right of the appellant/plaintiff to take recourse to appropriate

remedy in law for recovering possession of *chaubara* in question.

As the appeal has been decided on merits, applications for condonation of delay in filing and refiling the appeal are of academic relevance.

(Rekha Mittal)
Judge

16.10.2018
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