

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

RSA No.362 of 2018 (O&M)

Date of Decision:17.02.2018

Smt. Kamlesh Appellant

Vs.

Daya Chand Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Akashdeep Singh, Advocate for the appellant.

RAMENDRA JAIN, J. (Oral)

The plaintiff has filed the regular second appeal against the judgment dated 25.10.2017 of the First Appellate Court dismissing her suit while setting aside the judgment and decree dated 26.11.2015 of the trial Court in her favour.

Put pithily, appellant- plaintiff filed a suit for permanent injunction claiming herself to be lawful tenant in the house in dispute admitting ownership of the respondent over the same pleading that her owner was trying to dispossess her illegally and forcibly.

After holding trial, the trial Court decreed the suit, thereby restraining the respondent- landlord from evicting the appellant from the house in dispute except in due course of law vide judgment and decree dated 26.11.2015.

Being aggrieved, respondent- landlord approached the First Appellate Court who after giving due hearing to both the sides, non-suited the appellant by dismissing her suit vide judgment and decree dated

25.10.2017 and directed her to vacate the house in dispute within three months and in case of her failure to do so, respondent- landlord would be entitled to register the case of impersonation against her.

Learned counsel for the appellant contends that the First Appellate Court at the most was empowered to dismiss the suit of the appellant and not beyond that. Granting liberty to the respondent- landlord by it for registration of a case of impersonation against the appellant, in case, the house in dispute is not vacated by her within three months is completely illegal and erroneous. The First Appellate Court had failed to appreciate that the appellant was in settled possession of the house in dispute and, therefore, could not have been evicted except in due course of law. In support of his arguments, learned counsel for the appellant has placed reliance upon judgments of Hon'ble the Supreme Court in **Rame Gowda (D) by Lrs v. Mr. Varadappa Naidu (D) by Lrs and another**, 2004(1) R.C.R. (Civil) 519, **Subramaniaswamy Temple, Ratnagiri v. V. Kanna Gounder (Dead) by LRs**, 2009(3) SCC 306 and a judgment of Allahabad High Court in **Smt. Premawati v. Jagdish Prasad and others**, 2010(49) R.C.R. (Civil) 415.

Having given considerable thoughts to the submissions made by learned counsel for the appellant, the instant regular second appeal is completely devoid of any merit for the reasons to follow:-

(i) The appellant with dishonest intention tried to retain possession of the house in dispute, illegally by blowing hot and cold. At one point of time vide document Ex.D6, she claimed herself to be owner of the house in dispute before the government department whereas in the

present litigation, she claims herself to be tenant in it under the respondent.

The above dishonest conduct of the appellant has rightly been deprecated by the First Appellate Court. (2) Even the appellant could not prove her tenancy over the demised house by leading some evidence what to talk of any cogent and convincing. She has no rent receipt in her favour, therefore, her possession has rightly been observed as that of trespasser by both the Courts below. (3) The trial Court though has termed the appellant as a trespasser but observed her to be in settled possession of the house in dispute whereas the First Appellate Court has negatived the aforesaid finding of the trial Court observing that the appellant has not been able to prove that she is in settled possession. For ready reference, the relevant findings of the First Appellate Court are reproduced hereunder:-

“11. Now next plea comes before this Court as to whether the payment of rent is proved or not? It is clear that respondent is claiming herself as tenant in the premises but there is no such receipt on the file. There is no document showing that she has ever been issued any receipt by the appellant. It is clear from the documents Ex.D14 and Ex.D15 that a case was registered against Smt. Nirmala Devi alleged sister of respondent. This case was registered on the termination of pregnancy which is illegal, in the eyes of law. Hence, FIR bearing no.17 dated 17.02.2008 was registered against Smt. Nirmala Devi. Hence, receipt is also not proved on the file. Hence, this plea is also decided in favour of appellant against the respondent.

12. Now next plea comes before this Court as to whether

despite being encroacher she is entitled to get the relief from the court or not? It is clear that a person who is in settled possession is entitled to seek the injunction but in the present case, respondent is not in a settled possession. Plaintiff is entitled to seek the possession but respondent is not in settled possession but she is encroacher. It is also clear that she is not only encroacher but has been claiming herself as owner of the property. I have gone through the document Ex.D6. Ex.D6 document is showing that she got a water connection in the premises claiming herself as a owner of the premises despite the fact that she is not the owner, so at one point of time, she has claiming herself as a tenant as well as owner of the premises. She is not the tenant. She is not the owner of the premises. It is clear from the documents available on the file that she has failed to prove her claim of being tenant and owner over the premises. It means that she has illegally occupied the premises of the appellant. It is clear that she has played with the law. It is also clear that she has claimed herself in possession of the premises illegally. Her induction in the premises is not legal. She cannot take the benefit of the law. Moreover, she has claimed herself as a owner before the department when she had obtained the water connection in the premises. It means she has also been impersonating himself as owner of the property. In the case titled Mal Singh vs. Des Raj and others, regular second appeal bearing no.2264 of 2017,

(P&H), wherein it has been held that trespasser cannot obtain injunction as a right against the true owner. It is well settled basic principle of law that the plaintiff must come to the court with clean hands. So, the plaintiff cannot be allowed to seek the injunction. In the present case, the respondent has not come before the Court with clean hands. Her induction in the premises is forcefully in a harassing manner to the appellant with intention to occupying the premises by playing fraud. She has also claimed herself as owner of the premises. It means that she has not only been claiming the possession but harassing the appellant also. Hence, she has not come to this Court with clean hands.”

I have gone through the judgment and decree of both the Courts below and find that in the judgment of First Appellate Court, there is no illegality and perversity. The facts and circumstances of the authorities relied upon by learned counsel for the appellant are not identical rather are distinguishable from the facts of the present case, therefore, no benefit of the same can be granted to the appellant. The regular second appeal is, therefore, dismissed.

February 17, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No