

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

RSA No.6004 of 2017 (O&M)

Date of decision : 31.07.2018

Parwati and others

...Appellants

Versus

Jagdish and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Jain, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.15782-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 535 days in refiling the present appeal is condoned.

Application is allowed.

Main case

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the trial Court.

The plaintiffs filed a suit for declaration and permanent injunction claiming that they are in possession of a suit land as tenants and the entries in the revenue record which have been changed, are illegal.

The plaintiffs claim that initially Gurdoyal was tenant on the

land. After the death of Gurdayal Singh, his son Sh. Leela Pandit inherited the tenancy and after the death of Sh. Leela Pandit, it is the plaintiffs who are legal heirs of Sh. Leela Pandit, are in possession of the property being successor-in-interest.

The plaintiffs in order to prove on record produced the copy of the revenue record from the year 1962 to 1988 where continuously the plaintiffs or their predecessors are recorded in possession column as tenants.

In the jamabandi for the year 1992-93, name of defendant No.11, Ran Singh was recorded in possession as a tenant. First Appellate Court after finding that such change in the revenue record is without any basis, decreed the suit.

On 20.07.2018, during the course of preliminary hearing, counsel appearing on behalf of the appellants prayed for time to establish how and in what manner the plaintiffs or their predecessors were ever physically evicted from the land in their possession. The order passed on 20.07.2018 by this Court is extracted as under:-

“Counsel for the appellants prays for an adjournment to establish that the plaintiffs or their predecessors were ever physically evicted from the land in their possession.

Adjourned to 31.07.2018.

To be shown in the urgent list.”

Today, counsel for the appellants has submitted that he is not in possession of any record to prove that the plaintiffs or their predecessors were dispossessed.

However, learned counsel for the appellants has submitted that the present suit is barred under Order 2 Rule 2 CPC because the plaintiffs

had previously also filed a suit which was withdrawn with a liberty to file fresh one. The liberty was sought on the ground that the plaint suffers from a technical defect. He submitted that while filing a fresh suit, the plaintiffs have included the entire land, although in the first suit, which had been withdrawn with a liberty to file fresh one, the entire suit property was not included. Hence, he insist that the subsequent suit would be barred under Order 2 Rule 2 CPC.

This Court has considered the submission. Once on technical defect, earlier suit was permitted to be withdrawn with a liberty to file fresh one, Order 2 Rule 2 CPC would have no application.

Learned counsel for the appellants further submitted that the proceedings for eviction of the plaintiffs were initiated and they were ordered to be evicted. However, he admitted that in appeal, the eviction order was set aside and the case was remanded back. However, he submits that the landlords have filed a petition before the Financial Commissioner challenging the order of remand, wherein the operation of the order of remand has been stayed.

In the considered opinion of this Court, mere stay of order of remand does not in any way revive the order of eviction which has been set aside. Still further, no evidence has been produced to prove that pursuant to the order of eviction, which has been set aside, the plaintiffs were ever evicted.

Learned counsel for the appellants further argued that the jurisdiction of the Civil Court is barred as eviction proceedings are pending before the competent authority. However, learned counsel for the appellants

could not draw the attention of the Court to any provision of law which bars the jurisdiction of the Civil Court with regard to the relief claimed in the present suit for correction of entries in the jamabandi. Only Civil Suit under Section 45 of the Punjab Land Revenue Act, 1887 is maintainable. Further prayer of the plaintiff is for consequential relief of permanent injunction. The orders of eviction passed by the competent authority or the order through which eviction order was set aside or the interim order passed by the Financial Commissioner, have not been challenged in the present case.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

31.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No