

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.634 of 2018 (O&M)

Date of decision: 20.12.2018

Piara Singh

..... Appellant

Versus

Indra Wati

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kuldip Sanwal, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for possession filed by the plaintiff-respondent.

Makhan Singh was the original allottee of the land in dispute from the Government vide allotment letter dated 27.04.1999 and thereafter, a conveyance deed was executed in his favour on 15.06.1999. Makhan Singh subsequently sold the property in favour of Indra Wati. She initially filed a suit for injunction on 05.04.2007. During the pendency of the injunction suit, she filed an application for amendment of the plaint praying for permission to convert the suit for possession with the assertion that she has been dispossessed during the pendency of the suit, however, that application was dismissed. Thus, she filed a separate suit for possession and withdrew the suit for injunction.

The defendant-appellant contested the suit on the ground that it is the defendant-appellant who had made the land cultivable and in his continuous possession thereof.

Both the Courts on appreciation of evidence have found that

possession of the defendant-appellant is unauthorized. Learned counsel for the appellant has submitted that the conveyance deed in favour of Makhan Singh was having a stipulation that the property would not be sold for 15 years. Hence, he submitted that the sale in favour of Indrawati was a violation of the term of the conveyance deed.

Learned counsel when requested to point out from the judgment of the Courts below where such point was ever argued or pressed before the Courts below, learned counsel admitted that this submission has never been raised before the Courts below. A new submission/contention sought to be advanced for the first time in regular second appeal cannot be permitted to be raised.

Learned counsel for the appellant further submitted that the defendant-appellant has never dispossessed anybody and therefore, he is in possession from the very beginning. Once it is proved on file that the defendant-appellant has no right, title or interest in the property, owner can maintain a suit for possession unless the person in occupation proves otherwise. In the present case, the defendant has not even pleaded that he has perfected his title by way of adverse possession. Keeping in view the aforesaid fact, the suit filed by the plaintiff would be maintainable.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

20.12.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No