

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA- 908-2018 (O&M)

Date of decision: 08.02.2018

Jagdish and another

.....Appellants

versus

Randhir Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Saurabh Bajaj, Advocate for the appellants

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present regular second appeal is the judgment dated 8.12.2017, passed by learned Additional District Judge, Sonapat, affirming the judgment and decree dated 17.1.2014, passed by learned Additional Civil Judge (Senior Division), Gohana, vide which suit of the plaintiff/respondent was decreed and the defendants/appellants were directed to put the plaintiff in possession of the suit property, since at the time of filing of the present suit, he was in lawful possession of the suit property but during pendency of the present suit the plaintiff was dispossessed of the suit property against his wishes in unlawful manner.

I have heard learned counsel for both the parties and have also carefully gone through the file.

It comes out that plaintiff had claimed that he is tenant under defendant no.1 of the suit property paying rent of Rs.300/- per month. The property stands in the name of wife of defendant no.1. He has constructed a

room for storing wheat, chauff etc. and boundary walls were also raised. He has pleaded that defendant no.1 had taken loan from plaintiff. A dispute took place. It was settled in the Panchayat on 10.4.2007. A sum of Rs.88,000/- was paid by defendant no.1 to the plaintiff along with interest but the cost of construction was not paid. It was settled that plaintiff will pay Rs.1200/- per month rent to the defendant, which according to him was paid from 10.4.2007 till 31.12.2007. Thereafter, defendant no.1 refused to accept the rent. He further pleaded that an FIR no.41 u/s 323, 454, 506 & 34 IPC dated 13.2.2008 was registered against him to pressurize him to vacate the disputed property. During pendency of the proceedings before the trial Court, prayer for mandatory injunction was added, stating that despite injunction order dated 27.4.2008, passed by this Court, in favour of the plaintiff, defendants in collusion with the police, called him to the Police Station City Gohana on the pretext of a complaint against him. He was detained in the Police Station. Disputed property was illegally and forcibly occupied. 70 mands turis was also taken away.

In the written statement, defendants denied that the plaintiff is tenant of the disputed property. It was also denied that defendant no.1 is the owner of the property. It was claimed that defendants belongs to Rajasthan. Plaintiff is a land grabber and forcibly occupied the house, regarding which an FIR no.41 dated 13.2.2008 was registered under Sections 323, 454 and 506 read with Section 34 IPC. The panchayati compromise filed by the plaintiff was denied. It was further stated that compromise took place in which plaintiff agreed to withdraw the suit. An affidavit was also given. Possession of the suit property was also given to Smt.Bharpai by the plaintiff, after receiving Rs.38,000/-. Now, Smt.Bharpai is in possession of

the disputed house. From the pleadings, following issues were framed:-

- 1. Whether plaintiff is entitled to a decree for permanent injunction as prayed for in the plaint? OPP*
- 2. Whether plaintiff is entitled to a decree for mandatory injunction as prayed for in the plaint? OPP*
- 3. Whether the suit of plaintiff is not maintainable? OPD*
- 4. Whether plaintiff has concealed true and material facts from the court? OPD*
- 5. Whether plaintiff has no locus-standi to file the present suit? OPD*
- 6. Relief.*

Trial Court came to the conclusion that from the admission of the defendant in cross-examination it is proved that the plaintiff was in possession of the disputed property. The defendants have pleaded Panchayati compromise during the pendency of the suit but same was not proved on record and is a marked document. Trial Court came to the conclusion that the plaintiff has been dispossessed during pendency of the suit. Accordingly, suit was decreed. Findings were upheld by the lower appellate Court.

Learned counsel for the appellants-defendants has argued that once plaintiff claimed that he was forcibly dispossessed, burden was shifted upon him. Except statement of plaintiff and copy of the site plan and application of , Judicial remand, there is no other document on file.

I am of the view that findings of facts have been recorded by both the Courts below, based on the admission of appellant defendant made in cross-examination, in which, he has admitted that he has given suit

property to the plaintiff on rent and thereafter, he has constructed one room. Further, the defendant claimed that on account of compromise, the possession was delivered to Smt.Bharpai. Once, the plaintiff has obtained the stay order, it is unlikely that he will deliver back the possession. Therefore, both the Courts have believed the statement of the plaintiff that during pendency of the suit, he was forcibly dispossessed. Findings of facts have been recorded. No law point arises. There are concurrent findings of facts by both the Courts below. There is no ground to interfere.

The present regular second appeal stands dismissed accordingly.

08.02.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No