

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4428-2019 (O&M)

Date of decision: 26.09.2019

Neeraj Kumar

..... Appellant

Versus

Secretary-cum-Executive Officer, Market Committee Kaithal

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. RD Sharma, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this regular second appeal, appellant-plaintiff has laid challenge to judgment and decree of lower Appellate Court dated 04.09.2018, whereby judgment and decree of trial Court dated 20.07.2016, decreeing his suit for injunction in his favour, was set aside.

Briefly, appellant-plaintiff claiming his long possession over shop measuring 7'x3" x 12'6" from the time of his forefathers, boundaries of which are detailed in para 2 of judgment of trial Court, situated in old Anaj Mandi, Kaithal (hereinafter referred to as-'demised shop') through his suit sought restraining of respondent-defendant forever from interfering into his lawful and peaceful possession, over the demised shop or demolishing the same.

After holding trial, trial Court decreed the suit of appellant-plaintiff in *toto*, vide judgment and decree dated 20.07.2016.

Being aggrieved, respondent-defendant approached the lower Appellate Court, who after hearing both the sides accepting its appeal, set aside the judgment and decree of trial Court, vide judgment impugned herein.

Learned counsel for the appellant-plaintiff *inter alia* contends that lower Appellate Court has failed to appreciate that appellant-plaintiff was in possession of demised shop from the time immemorial through his forefathers. The demised shop is surrounded by three other shops and, thus, no common platform for grain market could have been constructed, as alleged. Since, appellant-plaintiff is in established possession of the demised shop, therefore, he cannot be evicted from the same, except in due course of law. In support of his contentions, learned counsel has relied upon judgments in (i) **Rame Gowda (D) by Lrs. Vs. Mr. Varadappa Naidu (D) by Lrs. And Anr., 2004(1) RCR (Civil) 519;** (ii) **Kotha Singh Vs. Municipal Committee, Narnaul, 1987 SimLJ 678** and (iii) **Municipal Committee, Sirhind Vs. Sakinder Singh, 1999(4) RCR (Civil) 417.**

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant regular second appeal merits dismissal, for the reasons to follow:

Admittedly, appellant-plaintiff does not have document of title in his favour qua the demised shop. He simply claims his right over the same on the basis of possession from the time of his forefathers. The lower Appellate Court, has rightly set aside the finding of trial Court that the demised shop was allotted to the appellant-plaintiff, inasmuch as, the

same was contrary to the stand of respondent-defendant that after acquisition of area underneath the shop by the Government, it had vested in the State free from all encumbrances, therefore, appellant-plaintiff was illegally occupying the public property.

No question of law much less substantial has been raised in the instant regular second appeal. Hence, the same is held not maintainable.

I have carefully gone through the judgment and decree of lower Appellate Court and find no illegality or perversity in the same.

The facts and circumstances of the judgments relied upon by learned counsel for the appellant are not applicable in this case, inasmuch as, his simpliciter suit was for injunction to permanently restrain the respondent from interfering in his peaceful possession over the demised shop or demolishing the same. Therefore, no benefit whatsoever of the same can be given to him.

Dismissed.

Since, the main appeal has been dismissed, thus, application (CM-12503-C-2019) for condonation of delay of 307 days in re-filing the instant appeal has rendered meaningless. Therefore, the same is also dismissed.

September 26, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No