

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3329 of 2007 (O&M)
Date of Order:18.03.2019

Amrik Singh

..Appellant

Versus

Bhupinder Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manish Kumar Singla, Advocate and
Ms. Shikha Singla, Advocate,
for the appellant.

Mr. Girish Agnihotri, Sr. Advocate, with
Mr. Vinod Bhardwaj, Advocate, and
Mr. Ishaan Bhardwaj, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below decreeing the suit filed by the plaintiff for possession and for award of mesne profit.

On 09.09.2008 while admitting the appeal, the court framed the following substantial questions of law:-

“(i) *Whether the court can decide the case on the ground that there is no pleading in the written statement especially when the application for amendment of written statement was pending and the same has not been decided before deciding the case?*

(ii) *Whether the learned Courts below have misread and misconstrued the evidence produced by the parties and*

has failed to consider the material evidence on the file?”

Plaintiff, who is aunt (father's sister) is undisputed owner of 156 kanals 3 marlas of land. She claims that she was in possession but forcibly dispossessed.

Defendant contested the suit by pleading that the plaintiff is settled in Canada for many years and he entered into forcible possession of the land in question on 15.05.1989 and by now has perfected his title by way of adverse possession.

Both the courts after noticing that the defendant himself has not appeared in evidence and the date on which he claims that he entered into forcible possession, he was barely 12-13 years, decreed the suit.

Learned counsel appearing for the appellant, at the outset, pointed out that before the first appellate court, application was moved for permission to amend the written statement in order to incorporate the name of the person in whose presence forcible possession was taken but it was disposed of by recording on the application itself that the same has been filed after the pronouncement of the judgment. Learned counsel has submitted that the application is part of the file and, therefore, it is highly improbable that the application was filed after the pronouncement of judgment.

This court has considered the submissions.

Even, if the application is deemed to have been allowed, still it does not improve the case put forth by the defendant-appellant. Keeping in view the relationship between the parties and the age of the defendant, who was child at the time when the alleged forcible possession is pleaded, the courts have rightly decreed the suit.

As regards questions of law, it may be noted that first question does not require answer because this court has assumed that the application for amendment, even if allowed, would not improve the case of the defendant-appellant. As regards question no.2, attention of the court has not been drawn to evidence which has been substantially misread or misconstrued.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the courts below.

The regular second appeal is dismissed.

March 18, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No