

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

RSA No.3021 of 2015 (O&M)
Date of Decision: March 19, 2019

Rakesh Kumar Bansal

...Appellant

Versus

Hari Chand Bansal and respondents

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Animesh Sharma, Advocate
for the appellant.

Mr. Vijay Sharma, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

1. This a regular second appeal that has been filed by the appellant-plaintiff Rakesh Kumar Bansal.
2. In brief, the facts of the case are, that the appellant-plaintiff filed a suit for declaration and permanent injunction claiming to be exclusive owner in possession of house, as detailed in the headnote, against his brothers i.e. the respondents-defendants. The Civil Judge (Junior Division) Patiala, on appreciation of the evidence, decreed the suit of the appellant-plaintiff partly by declaring him to be in possession of the suit property, however, suit qua declaration of him being the owner, was dismissed. The lower court also dismissed the counter-claim of the respondents-defendants. Aggrieved against the said finding, the

respondents-defendants herein filed an appeal before the Additional District Judge, Patiala, who set aside the judgment and decree passed by the lower court and dismissed the suit of the plaintiff. However, counter-claim filed by the respondents-defendants before the lower court was decreed completely by holding that respondent No.1/defendant No.1 is the owner in possession of the suit property. The appellant-plaintiff herein aggrieved against the finding of not being in possession, has filed the instant second appeal.

At the very outset, learned counsel for the appellant-plaintiff did not challenge the ownership of respondent No.1-defendant No.1, however, was aggrieved against the finding that the appellant-plaintiff was not in possession.

It is brought to the notice of this court by the counsel for the respondents-defendants that the instant appeal has been rendered infructuous on the ground that respondent No.1/defendant No.1 has filed a suit for possession, which is pending adjudication before the Civil Judge (Junior Division), Patiala in which the appellant-plaintiff herein has appeared and sought time to file the written statement and reply to the application under Order 39 Rule 1 and 2 CPC.

In view of the fact that respondent No.1-defendant No.1 herein has filed a suit for possession, as a natural consequence thereof, it would mean that he is admitting that the appellant-plaintiff is in possession. Under these circumstances, the instant appeal has been rendered infructuous, as such, no further orders are called for. The instant appeal is accordingly disposed of, as having been rendered infructuous, leaving it open to the

appellant-plaintiff to raise whatever pleas available with him before the court below.

March 19, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No