

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.6602 of 2016 (O&M)

Date of Decision:01.04.2019

Raees Ahmad

...Appellant(s)

Versus

Dayawanti

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Chetan Mittal, Senior Advocate with
Mr.Kunal Mulwani, Advocate for the appellant.
Mr.J.S.Brar, Advocate for the respondent.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiff claims that he was tenant in possession of a small area apart from a shop and he has been forcibly dispossessed from small area on 25.10.1997. The plaintiff also claims that he got registered a DDR No.24 dated 26.10.1997, complaining about his forcible dispossession which was ultimately registered as a criminal case. He further pleaded that he filed a petition under Sections 10 and 12 of the East Punjab Urban Rent Restriction Act, 1949 (for short `the Act of 1949) but withdrew the same in the year 2007. Hence, plaintiff prayed that a decree for mandatory injunction be passed in his favour, restoring the possession of the premises from where he was forcibly dispossessed.

The defendant-owner contested the suit and pleaded that the plaintiff is a tenant in possession of the shop which has been depicted in the lay out plan with characters as 'ABCD'. It was further pleaded that in a

criminal case, defendant has been acquitted by the court. It was further pleaded that the agreement to sell as set up by the plaintiff with respect to the main shop, which is depicted in the lay out plan with characters as 'ABCD', is also result of coercion because of police pressure.

Both the courts below on appreciation of evidence have dismissed the suit. Although, this Court is of the opinion that the findings of the courts with regard to suit being pre-mature and barred under the provision of Order 2 Rule 2 of the Code of Civil Procedure (for short 'CPC') are not correct, because a suit for mandatory injunction cannot be held to be pre-mature on the ground that the suit for specific performance of the agreement to sell is pending particularly when the properties involved in both the suits are different. Similarly the present suit would not be barred under Order 2 Rule 2 CPC as previously the plaintiff had not filed any suit. He had only filed a petition under Sections 10 and 12 of the Act of 1949, which was not maintainable and, therefore, the plaintiff withdrew the aforesaid proceedings. Hence, there was no suit pending.

However, this Court after hearing the learned counsel for the parties is of the opinion that there is no force in the appeal for the following reasons:-

- (i) The suit filed by the plaintiff is barred by time as the suit was instituted on 11.06.2007, whereas plaintiff himself admitted that he was forcibly dispossessed on 25.10.1997. Although, there is no specific article dealing with the suits for mandatory injunction in the Schedule attached to the Limitation Act, 1963, however, in absence thereof, Article 113 which is a residuary article dealing with the suits for which no period of

limitation is specifically provided elsewhere, the limitation would be three years from the date when the right to sue accrued. Thus, the right to sue accrued to the plaintiff on 25.10.1997 itself and, therefore, limitation would begin to run from 26.10.1997.

(ii) A suit for mandatory injunction would not be maintainable on account of alleged forcible dispossession. Suit for mandatory injunction is governed by Section 39 of the Specific Relief Act, 1963 and grant of mandatory injunction is not a substitute of suit for possession. The court has a discretion to grant mandatory injunction in appropriate cases.

(iii) Still further, the plaintiff has failed to establish his forcible dispossession at the hands of defendant. The complaint filed by the plaintiff, which resulted into a criminal case alleging forcible dispossession, stands dismissed. In this suit also, both the courts have not found that the plaintiff has been forcibly dispossessed.

In view of the aforesaid reasons, the Court does not find any good ground to interfere. Accordingly, the present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

01.04.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No