

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

RSA No.6328 of 2018(O&M)

Date of decision: 28.2.2020

Arvind Garg and others

.....Appellants

VERSUS

Anup Suneja and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Johan Kumar, Advocate for the appellants.

REKHA MITTAL, J.

CM No.17738-C of 2018

Prayer in this application is for condoning delay of 57 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. Johan Kumar, Advocate, the application is allowed. Delay of 57 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.6328 of 2018

Challenge in the present appeal has been directed against judgment and decree dated 27.11.2017 passed by the Additional District Judge, Faridabad whereby appeal against judgment and decree dated 30.09.2016 passed by the trial Court dismissing suit of plaintiff/respondent No.1 was accepted, suit of the respondent/plaintiff was decreed to the following effect:-

"...A decree for permanent injunction is passed in favour of the plaintiff and defendants are restrained from dispossessing the plaintiff or demolishing the shop except in due course of law and defendants No.4 and 5 are directed to give opportunity of hearing to the plaintiff before taking any action in respect of the suit property."

Counsel for the appellants would fairly inform that he has no grievance to express qua grant of injunction restraining the defendants from dispossessing the plaintiff or demolishing the shop except in due course of law with a direction to defendants No.4 and 5 to give opportunity of hearing to the plaintiff before taking any action in respect of the suit property. However, the sole submission made by counsel for the appellants is that in a suit for injunction filed by the respondent/plaintiff, the Appellate Court has recorded findings qua right of the plaintiff/respondent No.1 in shop No.3 on the basis of documents purported to be executed by the appellants in favour of the plaintiff and his brother Atul Suneja. It is argued that in a suit for permanent injunction, the Court cannot advert to the question of ownership more particularly in the circumstances when a litigant has sought injunction against interference in possession or forcible dispossession from the suit property. He would pray that the appeal may be disposed of but any such findings recorded by the Appellate Court in respect of right of respondent/plaintiff on the basis of documents pressed into service by him may not be allowed to constitute res judicata in any subsequent litigation involving determination of question of title qua the suit property.

I have heard counsel for the appellants, perused the paper-book particularly the judgment impugned.

Counsel for the appellants has not made any submissions to assail correctness of factual findings recorded by the Court on the basis of documents relied upon by the plaintiff/respondent No.1. Indisputably, the respondent/plaintiff is in possession of the suit property since the year 1994. It appears that necessity to file suit for injunction had arisen as Haryana Urban Development Authority (in short 'HUDA') had issued a notice under Section 17(3) of the Haryana Urban Development Act, 1977 of which notice was given to defendants No.1 to 3, allottees of SCO No.16-P, Sector 16, Faridabad measuring 386 square yards of which shop No.3 is a part and parcel. As counsel for the appellants has not advanced any arguments to assail findings of the Appellate Court based upon the documents relied upon by plaintiff/respondent, there is no question of setting aside those findings more particularly in the circumstances that appellants have no grievance to express qua decree of injunction passed in favour of respondent/plaintiff.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the appellants to raise a plea in any subsequent litigation involving title to the suit property that findings recorded in a suit for injunction touching right of the respondent/plaintiff in the suit property would not constitute res judicata, in view of submissions aforesaid. In case any such plea is raised, the same would be decided by a competent Court in accordance with law.

FEBRUARY 28, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no