

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.659 of 2021(O&M)

Date of decision:05.10.2021

Ganga Lal

...Appellant

Versus

Ved Parkash Kathuria and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Jain, Advocate, for the appellant.

Mr. Vikram Singh Dhakla, Advocate
for respondent no.1 and 2.

ANIL KSHETARPAL, J (Oral)

Defendant No.1 has filed this Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while decreeing a suit for grant of decree of mandatory injunction along with mesne profits for un-authorized use of the premises.

The plaintiffs (respondents herein) claim the property on the basis of title as they have purchased it through a registered sale deed. Originally, defendant no.1 was owner of the property. He sold it to Sh. Gurvinder Singh and Mahesh on 03.01.2000. Thereafter, the defendant took the property on lease for a period of 10 years to set up a fuel station. The plaintiffs have undisputedly purchased the aforesaid property. It is claimed that defendant no.1 entered into a partnership with the plaintiffs for running the fuel station and a fuel station had been operating on the said property which is no more in operation.

The plaintiffs filed a suit for direction to defendant no.1 to remove the structure of the fuel station which was lying abandoned.

Both the Courts, on appreciation of the evidence, found that defendant no.1 failed to prove any right, title or interest in the suit property. The learned first appellate Court, after re-appreciating the evidence, affirmed the aforesaid findings arrived at by the learned trial court. However, keeping in view the facts of the case, directed the plaintiffs to deposit the ad valorem court fee on the relief of possession as it was observed that the plaintiffs, in substance, pray for the relief of possession of the property in question.

This Bench has heard the learned counsels for the parties at length and with their able assistance perused the paper book.

The learned counsel representing the appellant contends that the plaintiffs had themselves produced the partnership deed in which defendant no.1 (appellant herein) is stated to have 20% share. He contends that the possession of defendant no.1 (appellant herein) is that of a partner and he cannot be said to be in un-authorized possession.

The learned counsel representing the appellant, on being questioned, has fairly admitted that defendant no.1 (appellant herein) has not raised the aforesaid plea as a ground of defence in the suit. The partnership deed is also not proved on the file. The appellant cannot be permitted to set up a new defence without laying any foundation before the Courts below. In the regular second appeal, this Court does not find it appropriate to permit defendant no.1 (appellant herein) to set up a new defence for which neither the foundation was laid in the pleadings nor in the evidence.

The learned counsel representing the appellant further contends

that the first appellate court erred in permitting the plaintiffs to deposit the ad valorem court fee without any application for permission to amend the plaint.

In the considered view of this Bench, it is the duty of the Court to do substantive justice. In essence, the plaintiffs had filed a suit seeking the relief of possession, however, appropriate ad valorem court fee was not affixed. The first appellate court has directed the plaintiffs to deposit the court fee to remedy the error/mistake. In other words, the Court has only moulded the relief in order to advance the cause of justice.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

October 05, 2021
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(ANIL KSHETARPAL)
JUDGE

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