

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

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**CR-2661-2016 (O&M)
Date of decision: 12.12.2022**

MADAN LAL

..Petitioner

Versus

BALDEV CHAND & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Abhinav Sood, Advocate
for Mr. Vikram Singh, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. This revision petition has been filed challenging the judgment passed by the Civil Judge (Junior Division), Rajpura, on 09.11.2015 while partly allowing the plaintiff's suit for restoration of possession under Section 6 of the Specific Relief Act, 1963.

2. The relevant facts, in brief, are required to be noticed which are as follows:-

The parties to the suit are successors in interest of late Sh. Ram Sarup. Sh. Baldev Chand son of late Sh. Ram Sarup filed a suit under Section 6 of the Specific Relief Act, 1963, for restoration of possession of the property shown in letter ABCD & EFGH, in the site plan attached, which is situated on the first floor of House No.J-8/10, Gobind Colony, Rajpura, District Patiala. He filed the suit claiming that he was forcibly thrown out of the 1st floor of the house on 02.06.2010 and when he returned back after attending a religious congregation, he came to know of this fact. In order to prove his possession, the plaintiff produced the passport of his daughter, ration card, voter identity card and residence certificate issued by the State of

Punjab in favour of his daughter. The defendants, while contesting the suit, claimed that the plaintiff was not residing in the disputed property but was residing at Bawari. The plaintiff through his special power of attorney (Ms. Shamta, daughter of Sh. Baldev Chand) appeared in evidence. The plaintiff also examined the police official to prove that he was forcibly dispossessed. PW-2 Sh. Inderjit Singh was also examined. On appreciation of evidence, the trial Court granted the decree for restoration of possession while refusing to grant the relief of declaration as well as permanent injunction. Challenging the correctness of the aforesaid order, this present revision petition has been filed.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the defendant No.1 contends that the plaintiff did not depose personally, hence, in view of the law laid down in *Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd., 2005(2) SCC 217 and Man Kaur (Dead) by LRs Vs. Hartar Singh Sangha, 2010(10) SCC 512*, the suit is liable to be dismissed.

5. On the other hand, the learned counsel representing the respondents contends that the plaintiff appeared through his daughter, who boldly faced the cross-examination. It has been submitted that the daughter has answered all the relevant questions in the cross-examination.

6. Under Section 114 of the Indian Evidence Act, 1872, the Court is entitled to draw an adverse inference if a party to the suit fails to produce the evidence which is in his possession/capacity. This is based on the rule of best evidence. In the present case, the plaintiff appeared through his daughter. The learned counsel representing the petitioner has read over

her deposition. It is evident that she has answered all the questions put to her by the learned counsel representing the defendant No.1. She is not a stranger to the family. In such circumstances, there is no reason to draw an adverse inference against the plaintiff particularly when he has already led sufficient evidence to prove his case. Reliance in this regard can be placed on

Pandurang Jivaji Apte vs Ramchandra Gangadhar Ashtekar 1981(4) SCC 569.

7. It is important to note that in this suit, the question is “Whether the plaintiff has been forcibly dispossessed on 02.06.2010 or not? Sh. Arihant Jain, Advocate, has read over the cross-examination of Ms. Shamta. A major part of the cross-examination has been conducted on the question of ownership. The correctness of her deposition with regard to the forcible dispossession of her father on 02.06.2010 was never challenged/questioned in the cross-examination. Moreover, the plaintiff, by producing various documents including the passport, domicile certificate, ration card and voter identity card, has proved that the plaintiff was in possession of one room constructed on the first floor of the premises. The defendant, after taking the plea that the plaintiff was residing at Banwari, did not lead any evidence to support the same.

8. Hence, dismissed.

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

December 12th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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