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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CM-1371-C-2021 in/and
RSA-3486-2018 (O&M)
Date of Decision: 29.08.2022**

Gurinder Pal Singh

..... Petitioner

Versus

Maninder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Amit Arora, Advocate for the applicant-appellant.

HARKESH MANUJA, J.**CM-1371-C-2021**

Application for restoration of the main appeal which was dismissed for non-prosecution on 24.02.2020.

For the reasons mentioned in the application, the same is allowed. Order dated 24.02.2020 is hereby recalled. The main appeal is restored at its original number and taken up on board today itself.

MAIN CASE:

Plaintiff-appellant (hereinafter referred to as 'plaintiff') is in appeal against the judgments and decree dated 18.11.2015 and 26.10.2017 passed by the Courts below; whereby suit for mandatory injunction for directing respondent- defendants (hereinafter referred to as 'defendants') to handover and restore certain articles, as prayed for by the plaintiff has been dismissed.

The facts leading to the present appeal are that the plaintiff filed a suit for mandatory injunction against the defendants

claiming himself to be tenants over the ground-floor of House NO.507, Ranjit Avenue, Amritsar. As per the plaint, the defendants threatened the plaintiff of dispossession and as such he filed a suit for permanent injunction wherein he was granted ad-interim injunction on 09.06.2005; which was later on confirmed on 22.08.05. He further states that despite there being a stay order he was dispossessed forcibly by defendants on 24.10.2005 and certain articles as detailed in his plaint were retained by the defendants. Hence, the suit.

In response, written statement was filed by the defendants stating therein that the plaintiff was not a tenant and rather licensee, who voluntarily handed over peaceful possession of the premises in question to defendants No.1 to 3 on 26.04.2005. They further stated that though an FIR was later on registered at the instance of plaintiff against the defendants, however, in the said FIR, cancellation report dated 10.02.2005 was submitted.

The Court of learned Civil Judge (Senior Division), Amritsar dismissed the suit filed by the plaintiff vide judgment and decree dated 18.11.2015 which was challenged in appeal. Even first appeal was also dismissed by the Court of learned Additional District Judge, Amritsar vide judgment and decree dated 26.10.2017. It is the said two judgments and decrees which have been impugned by way of present appeal.

The only argument raised in the appeal by learned counsel for the appellant is that the defendant No.6 did not appear herself as a witness; whereas she appeared through her husband

Ranjit Singh as DW1 and, therefore, an adverse inference should have been drawn against the respondents.

In this regard it is relevant to note here that it is the plaintiff who filed the present suit for mandatory injunction and as such the burden was upon him to prove his case and to stand on his own legs; rather than relying upon the weaknesses of the defendants. As the plaintiff has himself failed to discharge his burden of proving his case, as such there arises no question of raising adverse inference against defendant No.6 who produced her husband as her witness.

In the present case, both the Courts below have recorded concurrent finding of fact that the appellant/ plaintiff has not been able to prove on record the ownership of articles allegedly detained by the defendants. Learned First Appellate Court has even recorded a finding to the effect that PW3-Gurdeep Singh himself admitted that the bills produced by him are of one hand which was sufficient to create doubt with regard to their genuineness. Further it has also been recorded that one of the material eye-witness to the alleged occurrence of forcible dispossession, namely, Ramesh Pal Kaur was never examined by the appellant/ plaintiff.

As per the findings recorded by the Courts below, neither the appellant has been able to prove on record the source of money allegedly being kept in the house in question at the time of alleged forcible dispossession; nor even any valid Arms licence has been proved in his favour so as to prove theft of weapon.

Thus, in view of the findings recorded by both the Courts below which are purely factual in nature and based on evidence available on record, no question of law much less substantial question of law is involved in the present appeal.

There is no illegality or irregularity warranting interference by this Court in exercise of power under Section 100 of CPC. Therefore, the present appeal is, thus dismissed.

August 29, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>