

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

**SAO-33-2019 (O&M)**

**Date of Decision : 01.02.2023**

Kishan

....Appellant

VERSUS

Balbir Singh and Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

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

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**ALKA SARIN, J. (Oral)**

**CM-8806-CII-2019**

This is an application for condonation of delay of 07 days in filing the appeal.

For the reasons stated in the application, the same is allowed and the delay of 07 days in filing the appeal is condoned.

**SAO-33-2019 (O&M)**

The present appeal has been filed impugning the judgment and decree dated 19.02.2016 passed by the Trial Court and the judgment dated 01.12.2018 passed by the lower Appellate Court. Since no decree was drawn by the lower Appellate Court, hence, the present second appeal against order.

The brief facts relevant to the present lis are that the plaintiff-appellant filed a suit for permanent injunction averring in the plaint that he was the absolute owner in possession of a residential property/house

No.176, Ahata No.125 part of Khasra No.64 as described in detail in the plaint. It was further been averred that the defendant-respondents were bent upon raising illegal and unlawful construction by encroaching upon his land. The Trial Court dismissed the suit by holding inter-alia as under :

*“The bone of contention in the present suit is whether the plaintiff is in possession in respect of the suit land or not. It has come in the evidence of the plaintiff that he has instituted suits regarding the present suit land earlier and they were withdrawn by him. It has been further admitted by the plaintiff that in the earliest suit, a local commission was appointed and at that time Siya Ram had raised his construction and was found in possession of the same. He has admitted that presently Balbeer as well as Siya Ram are in possession, meaning thereby that the plaintiff is not in possession of the suit land. Further, from the perusal of documentary evidence also, it has become crystal clear that earlier also the plaintiff has filed suits against all the defendants and it was pertaining to the same property wherein he has asked for possession as well as the relief of permanent injunction as clear from the certified copies of the plaint EXDW4/C and EXPW4/G but the said suits were dismissed as withdrawn meaning thereby that the fact that he is out of possession with respect to the suit land has become confirmed.*

*Undisputedly, the present suit is one for permanent injunction and in such a suit the plaintiff has to establish that he is in possession in order to be entitled to a decree for permanent injunction. The general proposition is well settled that a plaintiff not in possession is not entitled to the relief without claiming recovery of possession. Before an injunction can be granted it has to be shown that the plaintiff was in possession. Reliance can be placed upon the case titled as Sri Thimmaiah versus Shabria and Others 2008 (2) Civil Court Cases 277 (SC). Hence, these issues are decided against the plaintiff and in favour of the defendant.”*

Aggrieved by the said judgment and decree dated 19.02.2016, an appeal was preferred, which met the same fate. It is to be noted that in the impugned judgment dated 01.12.2018 passed by the lower Appellate Court, it has been noticed that earlier also the plaintiff-appellant had filed an appeal against the judgment and decree dated 19.02.2016 which was withdrawn on the statement made by the plaintiff-appellant on 07.12.2016 that he did not want to proceed with the civil appeal and now the second appeal was filed on the same grounds. The lower appellate Court holding the appeal not to be maintainable, dismissed the same.

Learned counsel for the plaintiff-appellant would contend that both the Courts below have not appreciated the evidence on the record and

that it had been sufficiently proved that the plaintiff-appellant was in possession of the suit property.

Heard.

In the present case the Trial Court had come to a categorical finding that earlier also suits were instituted by the plaintiff-appellant, which were subsequently withdrawn by him. In an earlier suit a Local Commission was appointed and it was found that at that time Siya Ram had raised construction and was found in possession of the suit land. The plaintiff-appellant had further admitted that Balbeer as well as Siya Ram were in possession. There is not an iota of evidence on the record to prove the possession of the plaintiff-appellant on the property in dispute. Further still, the appeal filed by the plaintiff-appellant itself was barred inasmuch as the plaintiff-appellant preferred an appeal against the judgment and decree dated 19.02.2016 which appeal was withdrawn by him on 07.12.2016 by making a statement that he did not want to proceed with the civil appeal. Without disclosing that the earlier appeal had been withdrawn by him, a second appeal was preferred by him and accordingly the appeal was dismissed by the lower Appellate Court vide judgment dated 01.12.2018. Learned counsel for the plaintiff-appellant has not been able to convince this Court with reference to the evidence available on the record to show that the plaintiff-appellant is in possession of the suit property. There is also no explanation forthcoming for having withdrawn the previous appeal and without disclosing the withdrawal of the previous appeal on 07.12.2016, the filing of the second appeal.

In view of the above, the present appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

**February 01, 2023**  
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**(ALKA SARIN)**  
**JUDGE**

NOTE : Whether speaking/non-speaking : Speaking  
Whether reportable : YES/NO