

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

264

RSA-5248-2019 (O&M)
Date of Decision :18.01.2023

Zora Singh

...Appellant

Versus

Suraj Bhan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jai Bhagwan, Advocate for the appellant.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-14868-C-2019

The present application has been filed for condonation of delay of 45 days in refiling the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 45 days in refiling the present appeal is condoned.

RSA-5248-2019 &
CM-14869-C-2019

In the present regular second appeal, the challenge is to the decree and judgment dated 12.02.2019 passed by the Lower Appellate Court by which, the judgment and decree dated 09.02.2018 passed by the trial Court has been set aside so as to dismiss the suit filed by the appellant-plaintiff.

As per the facts on record, appellant-plaintiff filed a civil suit for permanent prohibitory injunction restraining the defendants from illegally and forcibly dispossessing the appellant-plaintiff and not to cause

any interference in the peaceful possession of the plot measuring 10 biswas as per the site plan attached with the suit.

The trial Court vide order dated 09.02.2018 decreed the suit in favour of the appellant-plaintiff whereas, in an appeal filed by the respondents-defendants, the Lower Appellate Court vide order dated 12.02.2019 accepted the appeal and set aside the judgement and decree dated 09.02.2018 passed by the trial Court and consequently dismissed the suit filed by the appellant-plaintiff.

Learned counsel for the appellant-plaintiff argues that the judgment of the lower Appellate Court is perverse to the evidence on record and therefore, the order dated 12.02.2019 passed by the Lower Appellate Court is liable to be set aside and the judgment of the trial Court dated 09.02.2018 should be upheld.

On being asked as to on what grounds the judgment of the Lower Appellate Court is perverted or contrary to the facts on record or law, no perversity could be pointed out by the learned counsel for the appellant-plaintiff. Learned counsel for the appellant-plaintiff submits that once the possession of the property in question was established by the trial Court, the same could not have been interfered with by the Lower Appellate Court so as to dismiss the suit.

The reasons which have been given by the Lower Appellate Court for setting aside the judgment of the trial Court appears to be sound and in accordance with the facts and evidence on record. Findings that the possession of the appellant-plaintiff upon the property in question was based upon the testimony of PW3 one Jarnail Singh, who had appeared as draftsman and has made a bald statement that appellant-plaintiff was in

possession of the property in question measuring 10 biswas though without the support of any record or to substantiate by any fact. The said testimony has rightly been countered by the Lower Appellate Court on the basis of the revenue record. In para-15 of the judgement of the Lower Appellate Court it has been clearly mentioned that land in question belongs to Nagar Palika, Malerkotla and in column No.4 of the jamabandi, possession is shown to be of 'Chamaran' Qila Rehmatgarh. From the said revenue record, it is clear that the property in question is given to the Ramdasia community and all the persons belong to the said community has interest in whole over the said property and there was nothing on record to show that appellant-plaintiff was in exclusive possession of the property in question.

Further, owner of the property i.e. Nagar Palika, Malerkotla has not been impleaded in the suit so as to claim possession. It has been held by the Lower Appellate Court that the permanent injunction being sought is also against the members of the same community which is having possession over the property in question as per the revenue record hence, when the interest of full community is involved in the said property and no evidence has come on record that the appellant-plaintiff is in exclusive possession of the said property, the findings recorded by the Lower Appellate Court are in consonance with the evidence on record. As per the evidence, the property in question is a wrestling ground to teach the students sport of wrestling belonging to the community in question and appellant is only a coach there.

No further argument has been raised by the learned counsel for the appellant-plaintiff .

As no perversity in the order dated 12.02.2019 passed by the

Lower Appellate Court has been pointed out by the learned counsel for the appellant-plaintiff qua the facts on record hence, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

January 18, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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