

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

SAO-93-2018 (O&M)

Date of Decision : 09.01.2023

Prem Singh

....Appellant

VERSUS

Gurmukh Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Abha Rathore, Advocate for the appellant.

Mr. Rahul Rampal, Advocate for the respondent.

-.-

ALKA SARIN, J. (Oral)

The present appeal has been preferred against the order dated 25.09.2018 passed by the Appellate Court whereby the suit has been remanded for a fresh decision in accordance with law granting one effective opportunity to the plaintiff-respondent to lead his evidence at this own responsibility subject to Rs.5000/- as costs. Aggrieved by the said order the present appeal has been preferred by the defendant-appellant.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for recovery of possession and for mesne profits. Despite seven opportunities, the plaintiff-respondent failed to lead any evidence. On 22.05.2012, which was the date fixed for evidence of the plaintiff-respondent subject to last opportunity since evidence was not produced, the evidence of the plaintiff-respondent was closed by order and

on the same day judgment and decree dated 22.05.2012 was passed by the Trial Court dismissing the suit filed by the plaintiff-respondent under Order 17 Rule 3 CPC. Aggrieved by the said judgment and decree, an appeal was preferred. The Appellate Court remanded the case back to the Trial Court for a fresh decision in accordance with law after affording one effective opportunity to the plaintiff-respondent to lead his entire evidence at his own responsibility subject to payment of Rs.5000/- as costs. Aggrieved by the said order the present appeal has been preferred by the defendant-appellant.

Learned counsel for the defendant-appellant would contend that despite seven opportunities the evidence was not led and that the defendant-appellant, who is the true owner of the property, is unnecessarily being harassed. Learned counsel has further referred to Annexure P-3 appended with the appeal to contend that in a suit for permanent injunction filed against the Notified Area Committee, Manimajra, the present defendant-appellant was held to be owner in possession of the suit property. Learned counsel has relied upon the judgment of the Supreme Court passed in the case of **M/s Shiv Cotex Vs. Trigun Auto Plast P. Ltd. & Ors. [2011(4) RCR (Civil) 807]** to contend that when no evidence was led, the suit was rightly dismissed.

Per contra, learned counsel for the plaintiff-respondent has contended that the plaintiff-respondent had approached the Court for recovery of possession and for mesne profits on the basis of a registered sale deed dated 01.11.2007. It is further the contention that the defendant-appellant had lodged an FIR on the grounds of cheating and preparing a forged document in order to grab the suit property after the registration of

the sale deed dated 01.11.2007. It is further the contention that the plaintiff-respondent has since been acquitted though an appeal is pending before this Court.

Heard.

In the present case the suit is for possession and for mesne profits of a property situated in Manimajra, Chandigarh. The plaintiff-respondent had approached the Court on the basis of a registered sale deed dated 01.11.2007 whereas the stand of the defendant-appellant is that he was held to be owner in possession of the suit property on the basis of the judgment and decree dated 31.03.1986 passed in Civil Suit No.112 of 1985 filed against the Notified Area Committee, Manimajra, UT Chandigarh. In the present case the plaintiff-respondent was non-suited by the Trial Court under the provisions of Order 17 Rule 3 CPC on the ground that no evidence had been led by the plaintiff-respondent. No doubt the plaintiff-respondent has been remiss in not leading his evidence, however, the dismissal of the suit on the ground that no evidence was led would be harsh on the plaintiff-respondent who had approached the Court on the basis of a registered sale deed in his favour for a valuable consideration. The Appellate Court has rightly remanded the case to the Trial Court while granting only one effective opportunity to the plaintiff-respondent to lead his evidence at his own responsibility subject to payment of costs. It is apt to note that on the day the evidence of the plaintiff-respondent was closed, on the same day the impugned judgment and decree dated 22.05.2012 was passed leaving no opportunity with the plaintiff-respondent to challenge the order dated 22.05.2012.

There can be no quarrel with the proposition of law as laid down in the case of M/s Shiv Cotex (*supra*). However, in the said case it is to be noticed that it was held by the Supreme Court that the High Court's judgment was flawed as it had failed to adhere to the necessary requirement of framing substantial question of law. Hence, the said case would be of no help to the counsel for the defendant-appellant.

Keeping in view the fact that the Appellate Court has exercised its discretion and remanded the case back, I do not find it a fit case to interfere. As also keeping in view the totality of circumstances and to do complete justice between the parties, I do not find any reason to interfere in the order passed by the Appellate Court. However, the costs imposed on the plaintiff-respondent while allowing the appeal seem inadequate and the same are accordingly enhanced to Rs.30,000/- which are to be paid by the plaintiff-respondent to the defendant-appellant as a condition pre-requisite. The appeal stands accordingly disposed off. Pending applications, if any, also stand disposed off.

January 09, 2023
tripti

(ALKA SARIN)
JUDGE

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