



108

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-199-2018 (O&M)

Date of Decision : 05.11.2024

Virender

... Appellant(s)

Versus

Santosh & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Ghanghas, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-423-C-2018

1. This is an application for condonation of delay of 157 days in refiling the appeal.
2. For the reasons stated in the application, delay of 157 days in refiling the appeal is condoned. CM stands disposed off.

CM-422-C-2018

3. This is an application for condonation of delay of 89 days in filing the appeal.
4. For the reasons stated in the application, delay of 89 days in filing the appeal is condoned. CM stands disposed off.

RSA-199-2018

5. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 15.05.2014 passed by the Trial Court and the judgment and decree dated 16.08.2016 passed by the First Appellate Court.

6. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed the present suit for declaration and permanent injunction for restraining the defendant-respondents from interfering in the peaceful possession and enjoyment of the house and open portion of the property as mentioned in para No.1 of the plaint, averring in the plaint that the plaintiff-appellant was in possession for about 76 years on the basis of the lease deed bearing Vasika No.28162 dated 06.01.2012 executed in his favour by one Surender Singh son of Balwan Singh. It was further averred that Surender Singh, lessee, was an absolute owner of the property in question and he was enjoying the same peacefully and he had raised construction in the shape of a residential house. It was further averred that originally the area of the plot was 1500 sq. yards and Surender Singh took on lease a specific portion of 1/3rd share i.e. 500 sq. yards from one Mahabir Parsad Sharma and subsequently Smt. Chameli Devi took 500 sq. yards out of Khasra No.4434/35 from one Subh Ram. Thereafter the said Chameli Devi leased out her share to Nand Kishore Sharma who appointed Raj Singh as his GPA. Another 1/3rd share of the plot was taken by Smt. Santosh wife of Jai Kishan. It was further averred that previously Nand Kishore Sharma son of Tilak Ram filed a civil suit for permanent injunction titled as 'Nand Kishore Sharma through Raj Singh son of Subh Ram Vs. Surender son of Balwan' which was decided on 24.07.2008. In the said case it was held that the defendant - Surender - who is the lessee in the present suit, had raised construction on east northern part of the suit property, which means that construction raised by Surender was upheld and it was further held that there is 30 feet wide *rasta* on the northern side. It was further averred that the

defendant-respondents had no right and that they were interfering in his possession. On notice the defendant-respondents appeared and filed their written statement raising various preliminary objections as also that the suit was barred under Order 2 Rule 2 as well as Section 11 of the Code of Civil Procedure, 1908, bar of jurisdiction and non-joinder of necessary parties was also raised. On merits it was averred that the plot in question was originally given on lease by Virender i.e. the present plaintiff-appellant to Surender on the basis of a power of attorney in his favour and as the said Surender Singh lost the previously filed suit, therefore, the present suit has been filed in the name of Virender without any basis. It was further stated that Surender Singh was in possession of the property shown in yellow colour in the site plan attached with the written statement. It was further stated that the site plan attached with the plaint has already been held not to be as per the actual state of affair by the Civil Judge, Gurgaon. It was further stated that the site plan attached by Surender Singh with his written statement was not as per site and that the said finding was reaffirmed in the appeal and as such Surender was left with no right, title or interest over the suit property in question and the case had fraudulently been filed through Virender who had himself given the property on lease to Surender. Further averments in the plaint were also denied.

3. On the basis of the pleadings, the following issues were framed:

1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for ? OPP
2. Whether the plaintiff has cause of action to file the present suit ? OPP

3. Whether the plaintiff has no locus standi to file the present suit ? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
5. Whether the suit is not maintainable in the present from ? OPD
6. Whether the plaintiff is estopped by his own act, commission, omission, laches and acquiescence in the present suit ? OPD
7. Whether the suit is barred under Order 2 Rule 2 CPC ? OPD
8. Whether the suit is barred under Section 11 CPC ? OPD
9. Whether the plaint is liable to be dismissed Under Order 7 Rule 11 CPC ? OPD
10. Whether the suit of the plaintiff has not properly valued for the purpose of court fee and jurisdiction ? OPD
11. Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 15.05.2014. Aggrieved by the same, an appeal was preferred which was also dismissed by the First Appellate Court vide judgment and decree dated 16.08.2016. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant was in possession of the suit property and the same

was proved by producing the lease deed. It is further the contention of the learned counsel for the plaintiff-appellant that the lease deed was executed by one Surrender and now the defendant-respondents were interfering in his possession.

6. I have heard the learned counsel for the plaintiff-appellant.

7. In the present case the plaintiff-appellant was to prove his possession over the suit property. The only piece of evidence relied upon by the plaintiff-appellant was the lease deed which was also a marked document as the same was not proved in accordance with law. There was no other document which was produced on the record to even remotely suggest that the plaintiff-appellant was in possession of the suit property. The best piece of evidence i.e. electricity/water bills were also not produced. In the absence of any cogent evidence being led by the plaintiff-appellant to show his possession over the suit property, no fault can be found with the judgments and decrees passed by both the Courts.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

05.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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