

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**RSA No.822 of 2023 (O&M)
Reserved on : 23.03.2023
Date of Decision : 11.04.2023**

Harnek Singh

....Appellant

VERSUS

Nirmala Devi (deceased) through her LRs

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ishwar Lal, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been filed by the plaintiff-appellant against the judgment and decree passed by the First Appellate Court dated 21.01.2023 allowing the counter-claim filed by the defendant-respondent.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondent, her agents, servants, partymen, relative or with police help from interfering in the peaceful possession of the plaintiff-appellant over the workshop known as Saini Mechanical Works or forcibly dispossessing the plaintiff-appellant from the said workshop situated within the revenue estate of village Dhakansu Kalan, Tehsil Rajpura, District Patiala. The suit itself was dismissed as withdrawn on 23.09.2013. However, the defendant-respondent while filing the written statement also filed a counter-claim for possession and permanent injunction. The case as put forward in the counter-claim was that the property in dispute along with other properties shown with points JKLMNGAI in the site plan was owned by the defendant-respondent out of which portion shown with points ABFE i.e. shop consisting of two rooms was given on rent to the plaintiff-appellant and the

plaintiff-appellant was running his workshop and the rent for the same was Rs.1500/- per month but for the last 32 months the plaintiff-appellant was not making the payment. It was further stated that the site shown with points FEGHIB in the site plan had been illegally and unlawfully occupied and encroached upon by the plaintiff-appellant without any right, title or interest. It was further averred that the land was in possession of the defendant-respondent along with other land shown in the site plan but the plaintiff-appellant taking benefit of the old age of the defendant-respondent had forcibly occupied the portion shown in yellow colour in the site plan in the back of the shop/rooms by installing tin shed with iron support and an iron gate between point B and I. It was further averred that the defendant-respondent had also filed an application in the Police Station City Rajpura but the plaintiff-appellant colluded with the local police and forcibly occupied the said portion. It was further averred that the rate of rent had wrongly been stated to be Rs.240/- per month and the same was actually Rs.1500/- per month. Written statement to the counter-claim was filed by the plaintiff-appellant wherein it was averred that the defendant-respondent was a clever lady and her husband was a senior advocate of Rajpura and that during the pendency of the case the defendant-respondent had compromised the matter on 29.12.2011 whereby she agreed to execute a sale deed of 2 Biswas of land adjoining the workshop of the plaintiff-appellant for a sale consideration of Rs.5 lakhs within 15 days and later on the defendant-respondent got various dates in the present case for recording of her statement but ultimately she resiled from the compromise. The plaintiff-appellant also stated that he had filed a suit for specific performance against the defendant-respondent on the basis of the compromise/agreement dated

29.12.2011.

On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for ? OPP
2. Whether suit of plaintiff is not maintainable in the present form ? OPD
3. Whether plaintiff has no *locus standi* to file the present suit ? OPD
4. Whether plaintiff has not come to court with clean hands and has suppressed material facts from Court ? OPP
5. Whether defendant is entitled for the claim of possession of property shown in words BFEGHI shown in yellow colour in the attached site plan in counterclaim ? OPD (counter-claimant)
6. Relief

No findings were returned on issues nos.1, 2, 3 and 4 as the plaintiff-appellant had withdrawn his suit on 23.09.2013 and all the issues had rendered infructuous. The only issue which remained to be adjudicated was issue no. 5. The Trial Court vide judgment and decree dated 01.09.2017 dismissed the counter-claim of the defendant-respondent. Aggrieved by the said judgment and decree, an appeal was preferred. Vide judgment and decree dated 21.01.2023 the appeal was allowed and the counter-claim was accordingly decreed by the First Appellate Court. Hence, the present appeal by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant has contended that

the Trial Court had rightly dismissed the counter-claim filed by the

defendant-respondent and that the First Appellate Court has fallen in error in allowing the appeal and decreeing the counter-claim. It is further the contention of learned counsel that the area adjoining the shop given to the plaintiff-appellant on rent, shown in yellow colour, was also included in the tenancy. Learned counsel for the plaintiff-appellant has further contended that on 29.12.2011 a compromise was entered into for sale an area measuring 2 Biswas having dimension of 15'x60' which according to the plaintiff-appellant is adjoining to the workshop.

Heard.

In the present case the plaintiff-appellant had withdrawn his own suit on 23.09.2013. Prior to that, during the pendency of the suit, it was contended that an agreement had been entered into between the parties on 29.12.2011 on the basis of which a suit for specific performance was also filed by the plaintiff-appellant. The said suit was dismissed vide judgment Ex.P16 and decree-sheet Ex.P17. The plaintiff-appellant in his cross-examination also admitted that the counter-claimant had filed a suit for eviction *qua* two rooms. He also admitted that NHAI had acquired some land for widening of the road and that he had been paid compensation *qua* the structure and machinery. The properties shown in yellow colour had been held to be proved to be the ownership of the defendant-respondent. Even in the jamabandi for the year 2008-09 (Ex.P15), property measuring 15 Bighas and 10 Biswas was shown to be the ownership of the defendant-respondent to the extent of 2/9th share and Yogeshwar Verma and Rameshwar Verma, sons of Amar Singh, to the extent of 7/9th share. The plaintiff-appellant himself in his cross-examination admitted that the property shown in yellow colour depicted by letters BFGHI was the ownership of the defendant-respondent. Though it has been argued by

learned counsel for the plaintiff-appellant that the area marked by letters BFGHI was also given to the plaintiff-appellant at the time of creation of the tenancy, however, no evidence is forthcoming to show that the said land was also included in the tenancy. Rather, the evidence on the record supports the case of the defendant-respondent that the property was not included in the tenancy.

CM-3079-C-2023 has been filed by the plaintiff-appellant for adducing additional evidence in the form of photographs (Annexures D1 and D2). These photographs do not in any way further the case of the plaintiff-appellant. The photographs have no dates on the same and it is not ascertainable from the photographs as to when and where the same were taken. In view thereof, the application is dismissed.

In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises for determination by this Court in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

11.04.2023
jk

(ALKA SARIN)
JUDGE

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