

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 12.08.2015

RSA No.1079 of 1991

Sarbjit Singh Appellant

Versus

Notified Area Committee etc. Respondents

Present: Mr. G.S.Bhatia, Advocate, for the appellant.

Mr. S.K.Singla, Advocate, for respondent No.1.

RSA No.847 of 1991

Notified Area Committee, Machhiwara & another Appellants

Versus

Kamaljit Singh & others Respondents

RSA No.1077 of 1990

Notified Area Committee, Machhiwara & another Appellants

Versus

Kamaljit Singh & others Respondents

Present: Mr. S.K.Singla, Advocate, for the appellants.

Mr. G.S.Bhatia, Advocate, for the respondents.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HEMANT GUPTA, J. (ORAL)

This order shall dispose of aforementioned three regular second appeals i.e. RSA No.1079 of 1991 in respect of Shop No.65; RSA No.847 of 1991 in respect of Shop No.59 and RSA No.1077 of 1990 in respect of Shop No.67, situated at Samrala Road, Machhiwara. Since all the appeals arise out of the similar facts, the same are taken up for hearing together. However, for facility of reference, the facts are being taken from RSA No.1079 of 1991.

The plaintiff-respondent No.1 filed suit for possession of the Shop in question and also for compensation for use and occupation of the shop pleading that Gram Panchayat, Machhiwara was the owner in possession of the land measuring 1 Kanal 13 Marlas comprising in Khewat No.942, Khatauni No.1334, Rect. No.107//22/3, as recorded in the Jamabandi for the year 1976-77. The said land was leased out to one Amritsaria Mal – defendant No.2 w.e.f. 15.04.1972 for a period of 20 years vide Resolution No.7 dated 08.04.1972. Defendant No.2 was authorized to construct shops in the demised premises, but on the expiry of the lease period, he was required to deliver the vacant possession of the land to the Gram Panchayat after removing the super-structure, if any. Pursuant to such lease, defendant No.2 constructed shops and let out the same to different tenants. But later, defendant No.2 on 08.04.1978, offered to deliver back the possession of 11 shops to the Gram Panchayat, Machhiwara even before the expiry of the lease period on the condition that the lessor would pay him the requisite compensation and allow him to retain two shops free of rent for a period of 10 years. Considering the request, Resolution Nos.5, 6 & 7 were passed resolving that defendant No.2 shall retain one shop and the godown on a nominal monthly rent of Rs.5/-. The disputed shop alongwith other shops were vacated by defendant No.2 and vacant possession was restored to the lessor i.e. plaintiff. Defendant No.1, who was occupying the shop as a tenant, attorned to the Gram Panchayat after the possession was surrendered by defendant No.2. Defendant No.2 also started paying rent to the Gram Panchayat at the rate of Rs.100/- per month.

Subsequently, on 04.11.1978, Notified Area Committee was constituted after dissolving the Gram Panchayat, thus, the plaintiff became

owner of the suit property. The plaintiff, thereafter, filed the present suit for possession and also for damages for use and occupation of the shop in question. The suit was instituted for the reason that in proceedings under the Public Premises Land (Eviction & Rent Recovery) Act, 1973 initiated by the plaintiff, defendant No.1 denied the relationship of land-owner and tenant and, thus, the plaintiff claimed that defendant No.1 forfeited his tenancy right and became a tress-passer and that the plaintiff became entitled for possession.

Defendant No.1 in its written statement raised number of pleadings including the fact that the alleged lease was not created through a registered deed and that the transfer of immovable property can be done only through a registered instrument. The construction in the shop in dispute by defendant No.2 was denied. It was asserted that the land of the shop in question vested in the Punjab Wakf Board being a part of the grave-yard and it was lying vacant. It was asserted that the shop was constructed by defendant No.1 about 13 years back and that he is continuously in possession as owner. He claimed ownership on the basis of adverse possession. Defendant No.1 also denied that the shop in dispute is a part of Killa No.107//2/3. Defendant No.1 also denied the fact that he was either a tenant of defendant No.2 or of the Gram Panchayat.

Defendant No.2 in his separate written statement averred that the plaintiff had not paid any compensation for the super-structure of the shop in dispute and thus, not competent to file the suit. He denied that he handed over possession either to the Gram Panchayat or to the plaintiff. He denied the right of the plaintiff to demand the rent from defendant No.1.

From the pleadings of the parties, the trial Court framed the following issues:

- (1) Whether the land described in para No.1 of the plaint was leased out to defendant No.2 by the Gram Panchayat? OPP
- (2) Whether after taking this land on lease the shop in dispute was constructed upon the same by defendant No.2? OPP
- (3) Whether the shop in dispute was leased out to defendant No.1 by defendant No.2? OPP
- (4) Whether defendant No.2 offered to deliver back the possession of the shop in dispute to the Gram Panchayat and his offer was duly accepted? If so, to what effect? OPP
- (5) Whether defendant No.1 attorned his tenancy to the Gram Panchayat? OPP
- (6) Whether the plaintiffs committee has locus standi to file the present suit? OPP
- (7) Whether the shop in dispute was constructed by defendant No.1 himself about 13 years back and he is in possession since then? OPD.1
- (8) Whether defendant No.1 has become owner of the shop in dispute by adverse possession? OPD.1
- (9) Whether the suit is not maintainable as alleged in para No.1 of the preliminary objection of the written statement of defendant No.1? OPD.1
- (10) Whether the suit is within limitation? OPP
- (11) Whether the suit is barred by the principles of res judicata? OPD
- (12) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
- (13) Whether the suit property has not been correctly described by the plaintiffs, if so to what effect? OPD
- (14) Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP

- (15) Whether defendant No.1 is estopped from denying the title of the plaintiff by his act and conduct? OPP
- (16) Whether any rent is due from defendant No.1? If so, how much? OPP
- (17) Whether the shop in dispute is situated in Killa No.107//2/3? If not, to what effect? OPP
- (18) Relief.

To prove its case, apart from examining PW-1 Ravinder Nath Luthra, Ex-Sarpanch, Gram Panchayat, Machhiwara; PW-2 Shri V.K.Beri, Executive Officer, NAC, Machhiwara; PW-3 Dalip Singh, Kanungo and PW-4 Parkash Nath, the plaintiff tendered into evidence as many as 45 documents, which include Resolution Nos.7 & 185 dated 08.04.1972 (Ex.P1) & 07.06.1983 (Ex.P2) respectively; copies of entries in the rent register maintained by the Gram Panchayat, Machhiwara (Exs.P2 to P27); application dated 08.04.1978 (Ex.P28); copy of rent register (Ex.P32); copies of rent receipts (Exs.P33 & P34); Copies of income register of the defunct Panchayat (Exs.P35 & P36), copy of Jamabandi for the year 1981-82 (Ex.P37) and copies of the rent register maintained by the Gram Panchayat, Machhiwara (Exs.P45 & P46).

On the other hand, defendant No.2 appeared as his own witness as DW-1 and also examined DW-2 Harbans Lal, whereas defendant No.1 examined himself as DW-3 apart from examining DW-4 Harcharan Singh, DW-5 Surjit Singh and DW-6 Mohinder Singh, retired Kanungo. Defendant No.1 also produced on record copy of the order dated 31.01.1985 (Ex.D1) passed by the Rent Controller, Samrala and the copy of the judgment dated 10.05.1984 (Ex.D2) passed by the Appellate Authority, Ludhiana against the order (Ex.D1) apart from tendering other documents.

After considering the oral as well as documentary evidence, the learned trial Court held that the land in question was leased out by the Gram Panchayat to defendant No.2. For such finding, the trial Court relied upon application dated 08.04.1978 (Ex.P28) written by defendant No.2 requesting the Gram Panchayat to take possession of the shops constructed by him. In respect of Issue No.2, the trial Court again returned a finding that the shop was constructed by defendant No.2. The court referred to the rent receipts (Exs.P33 & P34) issued by the Gram Panchayat in favour of Sarabjit Singh relating to the year 1978, when there was no dispute between the parties. In respect of Issue No.3, the trial Court returned a finding that the disputed shop was leased out by defendant No.2 to defendant No.1. To return such finding, the trial Court referred to the judgment (Ex.P40) in a suit filed by defendant No.2 against the plaintiff and order dated 31.01.1983 (Ex.D1) rendered by the Rent Controller, Samrala on an application filed by defendant No.2 against defendant No.1 for his eviction under the East Punjab Urban Rent Restriction Act, 1949. In respect of Issue No.4, again a finding recorded is that the land in question over which shops are constructed is owned by the plaintiff referring to Ex.P37 as well as the judgment (Ex.P39) passed in a suit filed by defendant No.2 against the plaintiff. In respect of attornment, the learned trial Court recorded the following finding:

“Issue No.5

14. The findings on Issue No.3 are also helpful in deciding this issue. It has already been held that defendant No.1 had attorned the tenancy in favour of the Gram Panchayat. The Notified Area Committee, Machhiwara, was constituted after superceding the Gram Panchayat. The plaintiffs, thus, stepped into the foot-steps of the Gram Panchayat. There is no dispute that the entire property of the Gram Panchayat was mutated in favour of the Notified Area

Committee. The attorning of the tenancy is in no manner in doubt. The oral testimony of PW-1, PW-4 and DW-1 is clear and cogent. They cannot be discredited on any count whatsoever. To crown it all the effect of the documentary evidence satisfactorily proves attornment. Issue No.5 is also decided in favour of the plaintiffs.”

Consequently, while deciding other issues in favour of the plaintiff, the trial Court decreed the suit. An appeal against the said judgment and decree remained unsuccessful. Still aggrieved, defendant No.1 is in second appeal.

Admittedly, the defendant has not framed any substantial question of law. However, it is argued that other identical suits filed by the plaintiff-respondent against other occupants of the alleged shops constructed by defendant No.2 stands dismissed vide judgment dated 28.11.1988 rendered by this Court in RSA No.2482 of 1988 titled ‘Notified Area Committee, Machhiwara, Ludhiana & another Vs. Baldev Singh & another’. The said order being part of the record of this Court is admitted in evidence and is marked as Mark – CI. The same reads as under:

“The Notified Area Committee, the plaintiff-appellant filed ten suits for possession of the shops, in dispute. According to the learned counsel for the appellants, six suits were decreed by the trial court, whereas three suits giving rise to Regular Second Appeals No.2482, 2483 and 2484 of 1988, were dismissed. Appeals against the said decrees are pending in the Court of the District Judge, Ludhiana. Thus, argued the learned counsel, the appeals are liable to be decreed because the trial court has given different findings in different suits. On the other hand, the learned counsel for defendant-respondent No.1 has pointed out that these three suits have been dismissed because it has been concurrently found by both the Courts below, while discussing issue No.17 that defendant No.1 has not been proved to be a tenant under defendant No.2 or the plaintiff at any time. Therefore, the plaintiffs are not entitled to recover any amount from defendant

No.1. Thus, argued the learned counsel, in view of these concurrent findings of the Courts below, these three suits have been rightly dismissed by the Courts below.

2. After hearing the learned counsel for the parties, I find force in the contention raised on behalf of the respondent. Even in the appellate Court, it has been held that the plaintiff-appellant failed to prove that the shop, in dispute, was constructed by defendant No.2 in the land comprised in Killas Nos.2 and 3, rectangle No.107 and was leased out by him to respondent No.1. In view of this concurrent finding on the facts in these three suits, I do not find any infirmity or illegality in the appeal as to be interfered with in second appeal. Consequently, the appeal fails and is dismissed.”

The argument of learned counsel for the appellant is that since the plaintiff-respondent has filed ten suits out of which three suits were dismissed and that dismissal of such suits attained finality when RSA No.2482 of 1988, RSA No.2483 of 1988 and 2484 of 1988 were dismissed, therefore, the findings recorded in the appeals by this Court are operated as res judicata and the present appeal should be allowed on the basis of the aforesaid judgment as the issues raised in the said suits are identical, as in the present suit.

On the other hand, Mr. Singla, learned counsel appearing on behalf of the plaintiff-respondent, submits that plea of res judicata is misconceived, as the first condition to the plea of res judicata is that the parties in both the suits are same. In the present case, defendant No.1 was not party to any of the three appeals dismissed vide order dated 28.11.1988.

Having heard learned counsel for the parties, I do not find any merit in the present second appeal. A perusal of the order of the High Court shows that the suit was dismissed for the reason that the plaintiff has failed to lead any evidence of his ownership over Killas No.2 and 3, Rectangle No.107

and its lease to defendant No.1, the so-called tenant inducted by Amritsaria Mal.

Each suit is to be decided on the basis of evidence led by the parties. May be the plaintiff in all the cases is same and raised identical pleadings, but the evidence led is materially different. In the present case, the plaintiff has led evidence of ownership over the land while producing jamabandi for the year 1981-82 (Ex.P37) and the Resolution No.7 dated 08.04.1972 (Ex.P1). The plaintiff has also proved lease of shops by defendant No.2 to defendant No.1 and also request for surrender of possession by defendant No.2 vide application dated 08.04.1978 (Ex.P28). The judgment (Ex.D1) passed by the Rent Controller is on record, whereby an ejectment petition filed by defendant No.2 against defendant No.1 stands dismissed on the ground that there exist no relationship of land-owner and tenant, as defendant No.1 is a tenant of Notified Area Committee. The recital in the judgment to this effect may not be binding, but the fact remains that such judgment shows that a rent petition filed by defendant No.2 against defendant No.1 stands dismissed.

Keeping in view the other overwhelming evidence led by the parties including that of defendant No.2 regarding surrender of possession in favour of the Gram Panchayat and also proof of payment of rent vide rent receipts (Exs.P3 to P27) and the rent register, I find that the plaintiff-respondent has proved that defendant-appellant is a tenant, who attorned in favour of the plaintiff. Once a finding is returned that the defendant-appellant has attorned in favour of the plaintiff, he is estopped to deny the title of the land-lord in terms of Section 116 of the Evidence Act.

In view of the said fact, I do not find that any substantial question of law arises for consideration in RSA No.1079 of 1991. The findings of fact recorded are disputed by seeking re-appreciation of evidence. Even after examining the evidence, I do not find any error in the findings recorded. Consequently, the same is dismissed.

RSA Nos.847 of 1991 and RSA No.1077 of 1990 are directed against the judgment and decree passed by the first Appellate Court accepting the appeal filed by defendant-respondent. The first Appellate Court did not find any favour with the plea of adverse possession, as defendant No.2 has not examined any mason or labourer, who might have work for construction of the shop. Therefore, first Appellate Court found that defendant No.1 is the one, who constructed the shop. It was also found that in the absence of any lease deed, rent note or any other documentary evidence, defendant No.1 is not proved to be inducted as tenant by defendant No.2.

The following substantial questions of law arise for consideration in these two appeals, against the same defendant, but in respect of two different shops:

- (1) Whether the plaintiff is owner of the suit land on the basis of documentary evidence led by it and accepted by the trial Court?
- (2) Whether the predecessor of the plaintiff leased out the land to defendant No.2, who in turn leased shop after constructing the same to defendant No.1?
- (3) Whether defendant No.2 relinquished lease and defendant No.1 attorned as lessee in favour of the plaintiff?

In the present appeals, the plaintiff-appellant examined oral evidence in the shape of PW-1 Shri V.K.Beri, Executive Officer, NAC, Machhiwara; PW-2 Parkash Nath, Ex-Sarpanch; PW-3 Baldev Krishan,

Reader to Tehsildar, Samrala and PW-4 Dalip Singh, Kanungo. The plaintiff-appellant tendered similar documentary evidence has been tendered as in RSA No.1079 of 1991. Resolution No.7 dated 08.04.1972 is Ex.P1 in RSA No.847 of 1991, whereas Ex.P5 in RSA No.1077 of 1990 and copies of resolution Nos.5, 6 & 7 dated 24.07.1978 as Ex.P4 in both the appeals etc.

The learned trial Court considering almost similar evidence decreed the suit against Sarbjit Singh-defendant No.1 on 30.10.1986, subject matter of RSA No.1079 of 1991, whereas judgment and decree in the present suits were passed on 28.10.1986 and 29.10.1986. Since the pleadings and the evidence is similar, the plaintiff-appellant is held to be owner of the suit land. It is the first Appellate Court, which set aside the judgment and decree passed by the trial Court on wholly erroneous grounds. Since the plaintiff-appellant is proved to be owner, the findings recorded by the learned first Appellate Court are not tenable in law. Even on the second substantial question of law, it is proved that the plaintiff-appellant leased the land to defendant No.2, who in turn released the shop to defendant No.1. Defendant No.2 has relinquished lease in favour of plaintiff and defendant No.1 has also attorned in favour of plaintiff.

Consequently, while answering the substantial questions of law in favour of the plaintiff, both the appeals are allowed. The judgment and decree passed by the first Appellate Court are set aside and that of the trial Court are restored.

12.08.2015
Vimal

(HEMANT GUPTA)
JUDGE