

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

RSA No.3278 of 2001 (O&M)

Date of Decision: 29.05.2015

Jai Ganesh Bricks Industries

.....Appellant

Versus

Shanti Devi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate,
for appellant.

Mr. Sandeep Arora, Advocate,
for respondents.

SHEKHER DHAWAN, J

Present regular second appeal against judgment and decree dated 19.04.2001 passed by District Judge, Hoshiarpur whereby judgment and decree dated 16.03.2000 passed by Court of Civil Judge (Junior Division), Hoshiarpur was set aside and appeal was accepted.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of both the Courts below. However, relevant facts for the purpose of decision of appeal that plaintiff filed suit for permanent injunction for restraining the defendants from interfering in the possession of the plaintiff on the suit land measuring 5 kanals as detailed in head note

of the plaint. Plaintiff had been making payment of the rent regularly but defendant threatened to dispossess them forcibly from the suit land. Defendant contested the suit taking the plea that writing was got executed from defendant No.2 yet son of defendant No.1 vide which 10 kanals of land was given to the plaintiff for use and it was agreed that ₹1,000/- to be paid to the plaintiff per annum for the said purpose. The agreement was to remain in force upto the year 1996. After that plaintiff used to get the receipts after making payment of ₹1,000/- from defendant No.2 whenever he used to come to Hoshiarpur. Defendant No.2 never agreed to give suit land to the plaintiff nor he was competent to do so. Defendant No.1 is an illiterate lady and widow and had put her thumb impression on blank paper and plaintiff **in collusion** with the witnesses forged the document. Plaintiff was never in possession of the suit land nor ₹2,000/- was received by defendant No.1 as mentioned. Defendant No.1 has never handed over the possession of suit land and prayed that suit be dismissed.

4. On these facts, Court of first instance settled the following issues:

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
2. Whether the plaintiff is tenant of defendants? OPP.
3. Whether the plaintiff has not come to the court with clean hands? OPD.
4. Whether the receipts submitted by the plaintiffs are forged and fabricated? OPD.
- 4-A. Whether the suit is maintainable? OPD
- 4-B. Whether the site plan annexed with the plaint is correct? OPD.
5. Relief.

5. Court of first instance after recording of evidence and

appreciation thereof returned the findings in favour of the plaintiff and decreed the suit for injunction. However, it was made clear that defendants were at liberty to get the possession from the plaintiff in due course of law.

6. Defendants preferred First Appeal and the First Appellate Court reversed the said findings and set aside the judgment and decree of Court of first instance, hence present Regular Second Appeal.

7. Following substantial questions of law were settled by this Court on 07.12.2004:

1. Whether in a simple suit seeking injunction, the only fact needs to be established is as to whether the person seeking injunction is in possession of the suit land as to what is the nature of his said possession?
2. Whether in view of the clear admission of plaintiff/respondent No.1 to the effect that the appellant/defendant came in possession of the suit land as a tenant. Latter's suit for permanent injunction could legally be dismissed at all?
3. Whether the learned lower appellate Court has misread, misconstrued and misinterpreted the document, i.e., receipt (Exhibit P-2) in the presence of the statement of plaintiff-respondent No.1 herself whereby she submitted her thumb impressions thereon and thus erred in to hold that the said document is a forged and fabricated document?
4. Whether in the absence of even pleaded much less proved case of either of the respondents that the plaintiff firm, i.e., M/s Jai Ganesh Bricks Industries is an unregistered partnership firm, the learned lower appellate Court could hold that the suit filed by the appellant (plaintiff) is not maintainable in view of the provisions of Section 69 of the Partnership Act ?
5. Whether on account of non-examination of respondent No.2, son of respondent No.1, who as per own admission of respondent No.1, had given the suit land on rent to the

appellant (plaintiff), an adverse inference ought to have been drawn against the respondents?

8. At the time of arguments Mr. Sunil Chadha, Senior Advocate urged that Court of first appeal has set aside the findings of Court of first instance without any justifiable grounds especially when most of the facts are not disputed from defendants side. Even as per pleading of the parties itself land was belonging to defendant and same was taken on rent by plaintiff in the year 1990 and plaintiff used to make payment of rent. On the basis of admission of defendants itself possession was of plaintiff only. Parkash Chand defendant No.2 who is none else but son of Santi Devi failed to put in appearance before the Court. Santi Devi herself admitted in her cross-examination that possession on the suit land is of the plaintiff. Even photographs Mark A to Mark L who were admitted by Santi Devi showing that possession was of the plaintiff. As per agreement Exhibit P-2 also the possession has been shown to be of the plaintiff-appellant. So, there was absolutely no reason for the Court to first appeal reverse the reasoned findings.

9. While arguing on these points of law Mr. Sandeep Arora learned counsel for defendant took the plea that plaintiff assert their claim mainly on the basis of Exhibit P-2 which is forged one. More so the plaintiff firm is an unregistered firm and suit cannot be filed by an unregistered firm. Defendant No.2 Parkash Chand was not the owner of the suit property and he could not give the possession of the suit land to the plaintiff. PW-2 Ghadi Ram is not natural witness of the case, testified that he is Lamberdar of the village who could attest the same. Findings recorded by Court of first appeal are based on facts of case and evidence available on file and there are no grounds to set aside the said findings and the

substantial questions of law framed in this case be returned in favour of the respondent and appeal be dismissed.

10. Having considered the submissions made by learned counsel for both the parties this Court is of the considered view that most of the facts are not disputed in any way that suit land was owned by defendants. Thereafter defendants handed over the possession to the plaintiff in the year 1990 on receipt of payment of ₹2,000/- vide receipt Exhibit P-2. The possession of land was given for a period of 5 years initially. The factum of possession by plaintiff has been admitted by defendant No.1 herself. Receipt Exhibit P-2 was duly thumb marked by Santi Devi-defendant No.1. Even the execution of receipt has not been denied by defendant and simple plea of forgery and mis-representation have been taken. The same have not been proved on the file in any where. Law on the point is settled that a person who alleges fraud, required to establish the same beyond shadow of reasonable doubt like a trial in a criminal case because it is very easy to allege the fraud but the law requires that the same must be proved but that has not been done in this case.

11. As plaintiff has come to the Court to seek his possession and Court of first instance passed appropriate decree that defendants be restrained from dispossessing the plaintiff except in accordance with law because plaintiff is in established possession of the suit land.

12. Law on the point is settled that a person, in established possession is entitled to protect his possession.

13. Similar matter had gone before Hon'ble Supreme Court in case

Rame Gowda (D) by Lrs. Vs. Mr. Varadappa Naidu (D) by Lrs and

Anr. 2004(1) RCR (Civil) 519 that it is not necessary for the person

claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof. Hon'ble Supreme Court also observed that it is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner.

14. On the same point reliance was placed upon **Subramanya Swamy Temple Ratnagiri Vs. V. Kanna Gounder (dead) by Lrs. 2009(3) SCC 306** that it is thus clear that so far as the India law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser.

15. The Court of First Appeal has not taken this settled legal proposition in mind while reversing the findings of Court of first instance.

16. Resultantly above substantial question of law No.1 stands decided that appellant who is in possession of the suit property and seeking injunction so as to protect the same and all the five substantial questions of law dated 07.12.2004 are decided in favour of appellant.

17. Resultantly the present appeal accepted and judgment and decree dated 19.04.2005 passed by Court of First Appeal stands set aside whereas the judgment and decree dated 16.03.2000 passed by Civil Judge (Junior Division), Hoshiarpur stands restored.

(SHEKHER DHAWAN)
JUDGE

May 29, 2015

msd