

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3050 of 2009 (O&M)
Date of decision : November 28, 2015

Om Parkash

..... Appellant

Versus

Karam Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Virender Kumar, Advocate
for the appellant.

Mr. Parminder Singh, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The appellants-defendants are in Regular Second Appeal against the concurrent finding of fact whereby the suit claiming rendition of account w.e.f. 1.4.2000 has been declined on the ground that the agreement to sell dated 9.10.1997 has not been proved in accordance with law. In essence, the provisions of Section 68 of the Indian Evidence Act, 1872 have not been complied with.

Mr. Virender Kumar, learned counsel appearing on behalf of the appellants submits that the agreement dated 9.10.1997 was entered into between the plaintiff-defendant for sharing the profit in respect of tailoring business undertaken by him on 1st floor of the shop owned by the plaintiff and w.e.f. 1.4.2000 defendant had stopped paying profit which necessitated him to

file the suit. Both the courts below have committed illegality and perversity in holding that the agreement in question had not been proved inasmuch as, none of the witnesses have been examined. In this context, he had drawn attention of this Court to the order dated 4.5.2011. Thus, the following substantial question of law arise for determination by this Court:-

Whether the impugned judgments and decrees of both the courts below suffer from illegality and perversity as there has been misreading of oral and documentary evidence.

Mr. Parminder Singh, learned counsel appearing on behalf of the respondent-defendant submits that the suit is/was not maintainable for the reason that the appellant-plaintiff has filed an eviction petition claiming arrears of rent w.e.f. 31.3.2002 and the order dated 27.11.2010 was passed wherein the provisional rent has been assessed, then now there is a relationship of landlord and tenant.

He further submits that Arun Kumar Dhiman witness to the aforementioned agreement to sell has not been examined. Thus, there is no illegality and perversity in the impugned orders, much less no substantial question of law arise for determination by this Court.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce order dated 4.5.2011 which reads as follows:-

“Learned counsel for the appellant inter alia contends that the trial court has incorrectly observed that agreement Ex.P-1 has been attested by witnesses Som Parkash and Bal Kishan and none of them has been examined as witness whereas in fact impugned agreement Ex.P-1 had been attested by Som Parkash son of Bal Kishan and by Arun

Kumar Dhiman and out them Arun Kumar Dhiman has been examined as PW-2 and thus the agreement stands proved because there is also testimony of the plaintiff besides, testimony of Arun Kumar Dhiman. It is also contended that the agreement was attested by Mr. Dalip Singh, Notary since deceased and his daughter Ms. Mini Mehta, Advocate PW-3 stated that agreement Ex. P-1 had been attested by her father.

Notice of motion for 16.8.2011.

Records of the courts below be requisitioned.”

On going through the contents of the agreement dated 9.10.1997 it reveals that the same was witnessed by Som Parkash s/o Bal Kishan and Arun Kumar whereas both the courts below found that the witness to the agreement to sell were Som Parkash and Bal Kishan whereas Som Parkash is son of Bal Kishan. Arun Kumar witness to the agreement, has appeared as PW2 has deposed in terms of the averments made in the plaint, rather in the cross examination to a specific question, it has come that he had witnessed the agreement.

The plea of Mr. Parminder Singh, learned counsel for the respondent-defendant that the appellant-plaintiff has branded the respondent as a tenant is not sustainable as the tenancy has been created only w.e.f. 31.3.2002 whereas the claim in the suit for rendition of account is w.e.f. 1.4.2000.

In my view, the matter requires to be considered by the lower appellate court being the last court of fact and law after examining the aforementioned evidence.

Accordingly, the question of law is answered in favour of the appellant-plaintiff and against the respondent-defendant. The impugned orders are set aside. The matter is remitted back to the lower appellate court to decide

the appeal afresh in accordance with law, much less, the observations made hereinabove.

Parties through their counsel are directed to appear before the lower appellate court on 15.12.2015.

The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

November 28, 2015
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