

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2941 of 2013 (O&M)
Date of decision: 11.7.2014

Rajesh Bhaskar

.. Appellant

v.

Tarlochan Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Mandeep S. Sachdev, Advocate for the appellant.

...

Rajesh Bindal J.

The defendant is before this court against the judgments and decrees of the courts below, whereby the suit filed by the plaintiff-respondent for possession of shop bearing No. 1, situated on plot No. 946, Garha Road near Bus Stand, Jalandhar was decreed along with mesne profits.

In the case in hand, the plea taken by the appellant was that he was a tenant on the shop, hence, the suit for possession was not maintainable and the plaintiff had to avail of his appropriate remedy for seeking eviction on the grounds available.

Learned counsel for the appellant submitted that Hardev Singh purchased 12 marlas plot on 15.10.1975, out of which he sold six marlas to the plaintiff-Tarlochan Singh and his brother-John Singh vide registered sale deed dated 13.10.1998. The appellant was already in possession of the property in dispute from February, 1993 onwards. It was given to him by one Balwinder Singh, who had executed a rent note in favour of the appellant. Hardev Singh had even executed a power of attorney in favour of Avtar Singh on 14.9.1987. The appellant had also produced receipts on

record showing payment of rent to Balwinder Singh for March, 1993 and to Avtar Singh for April and May, 1993. He further submitted that as there was move to dispossess the appellant forcibly, he filed a suit for injunction on 1.6.1993 claiming himself to be a tenant in the property. Balwinder Singh and Hardev Singh were impleaded as parties to the suit. The same was decreed on 29.4.2000 only to the extent that the appellant will not be dispossessed from the property in dispute forcibly or illegally. Balwinder Singh and Hardev Singh though had filed written statement but thereafter they were proceeded against ex-parte. It was further submitted that once there are receipts on record showing payment of rent to Avtar Singh for April and May, 1993 and Avtar Singh had power of attorney executed by Hardev Singh, owner of the property, for dealing with the same, suit for possession was not maintainable as the appellant cannot be said to be trespasser. It was further submitted that the plaintiff had not been able to connect identity of the property purchased by him with the property in possession of the appellant. In the sale-deed, all what has been mentioned is that it has one room, whereas it was a shop. The prayer is for setting aside the judgments and decrees of both the courts below and dismissal of the suit filed by the plaintiff.

After hearing learned counsel for the appellant, I do not find any merit in the submissions made. The judgments and decrees of the courts below do not call for any interference by this court. It is a case where admittedly the appellant came in possession of the property in February, 1993. His own case is that he paid some amount to Balwinder Singh on 6.3.1993 as rent and to Avtar Singh for April and May, 1993. Thereafter, he did not pay even a single penny to any one, rather, started litigation as firstly a suit for injunction was filed by him on 1.6.1993, which was disposed of nearly after 7 years. His case for proving him to be a tenant in the shop is only based on some receipts issued by Avtar Singh and Balwinder Singh. He claimed that Balwinder Singh had executed a rent note on 9.2.1993 in his favour for the property in dispute. The rent note has not been exhibited as it is merely a marked document, but the appellant has not been able to prove as to how Balwinder Singh was entitled to let out the property to him

as he did not have any authority to do so. Further, though the appellant had produced a power of attorney dated 14.9.1987 executed by Hardev Singh in favour of Avtar Singh but thereafter there is no rent note or any agreement showing that the property was ever let out to the appellant. Even in the earlier suit filed by the appellant, his case was that he was a tenant in the property, however, that plea was not accepted. The identity of the property is very well established once pertaining to the same the appellant had earlier filed a suit for injunction. It had come on record in that suit that the property in question was earlier owned by Hardev Singh. It was the case of the appellant himself that it was let out to him by Balwinder Singh, hence, the appellant cannot be permitted to raise the plea that identity of the property has not been established. Neither Avtar Singh nor Balwinder Singh were produced by the appellant before the court.

For the reasons mentioned above, I do not find any merit in the present appeal. No substantial question of law arises. Accordingly, the same is dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

11.7.2014
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