

In the High Court of Punjab and Haryana at Chandigarh

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CM No.8256-C of 2015
and
R.S.A. No.3404 of 2015 (O&M)

.....

Date of decision:28.7.2015

Rajender Kumar Bhatia

.....Appellant

v.

Krishan Kumar Bhatia

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Nitin Kant Setia, Advocate for the appellant.

.....

Inderjit Singh, J.

CM No.8256-C of 2015:

For the reasons mentioned in the civil miscellaneous application, the delay of 19 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.3404 of 2015 (O&M):

This regular second appeal has been filed by Rajender Kumar Bhatia-appellant/defendant against Krishan Kumar Bhatia-respondent/plaintiff challenging the impugned judgment and decree dated 26.3.2015 passed by the learned Additional District Judge, Ambala, vide which the appeal filed by the appellant-defendant against the impugned judgment and decree dated 4.12.2013 passed by learned Civil Judge (Junior Division),

Ambala, decreeing the suit of the plaintiff, has been dismissed.

The brief facts of the case are that Krishan Kumar Bhatia-plaintiff filed suit for mandatory injunction directing the defendant to hand over the vacant possession of shop No.78 and also decree for recovery of future mesne profits at the rate of ₹10,000/- per month for unauthorized use and occupation of shop after the termination of licence along with interest at the rate of 18% per annum till delivery of actual possession. The case of the plaintiff is that he is registered owner of shop No.78 (AMC 2203 B-II) situated at Old Anaj Mandi, Ambala City as recorded in Municipal record also. The plaintiff received this shop from his father vide registered gift deed dated 2.5.1997. The defendant is real brother of the plaintiff and the plaintiff being in service, the defendant approached and requested to him to give above said shop to the defendant and the plaintiff agreed to give the shop on licence without payment of any licence fee as the defendant is his real brother. Further, the defendant agreed to vacate the shop as and when the plaintiff will ask him to do so. Since, it was a brotherly transaction, it was not reduced into writing and the defendant was given the possession in October 2003 as licensee. Now for the last four months, the plaintiff has been requesting the defendant to vacate the shop in question and to hand over the vacant possession of the shop in question, but to no avail. The plaintiff vide registered notice as well as UPC dated 11.8.2006 terminated the licence of the defendant and asked him to hand over the possession of the shop, but the defendant did not turn up.

On the other hand, the case of the defendant is that he is owner

of the shop in question. Earlier father of the defendant was carrying on his business under the name and style of M/s Kumar Brothers in the shop in question and he was holding the sales tax number/R.C. of the said firm. Gurmukh Dass Bhatia was the proprietor of the said firm since the year 1967. Thereafter, the defendant also joined the business after passing the Matriculation with his father, but his father remained proprietor of the said firm i.e. Kumar Brothers, Ambala City. In the year 1994, Gurmukh Dass Bhatia submitted an application with the Sales Tax Authority, Ambala City with the request that due to old age, the proprietor Shri Gurmukh Dass Bhatia of M/s Kumar Brothers, Ambala City has been changed and now the proprietor of the said firm/concern will be Rajender Kumar Bhatia i.e. the son of Shri Gurmukh Dass Bhatia w.e.f. 1.9.1994. Thereafter, defendant became the proprietor of M/s Kumar Brothers on the same Sales Tax and CST number. The defendant also stated that his possession is hostile. It is also stated that the father of the defendant executed a registered Will dated 24.2.1997 in respect of the shop in question in favour of the defendant and the said Will has not been cancelled by his father. The other facts have been denied. It is denied that the father of the defendant never executed the alleged gift deed in favour of the plaintiff.

After framing the issues and after the parties led evidence, the learned Civil Judge (Junior Division), Ambala, decreed the suit of the plaintiff vide judgment and decree dated 4.12.2013. Appeal was filed by the defendant. The learned Additional District Judge, Ambala, vide judgment and decree dated 26.3.2015 also dismissed the appeal. Aggrieved from

these judgments and decrees passed by the Courts below, this regular second appeal has been filed by the appellants-plaintiffs.

At the time of arguments, learned counsel for the appellant argued that the findings given by the Courts below are against the evidence. The findings are perverse, which are liable to be set aside.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that the plaintiff proved the registered gift deed dated 2.5.1997 executed by the father of the parties, namely, Gurmukh Dass Bhatia. This suit has been filed in the year 2006. Till then, no suit has been filed to challenge this gift deed. Even this suit has been filed by the plaintiff on the basis of this gift deed. Even in this suit no counter-claim has been filed for setting aside the gift deed. Otherwise also, the plaintiff has duly proved the gift deed as per the evidence on record and on the basis of this gift deed, the plaintiff is owner. There is nothing on record to show that the defendant is owner of the property in dispute. The Will was to become effective only after the death of Gurmukh Dass Bhatia, but during his life time, the father of the parties executed the registered gift deed in favour of plaintiff-Krishan Kumar Bhatia. Therefore, on the basis of the Will, the defendant cannot claim ownership. Similarly, the plea that his possession is hostile also of no value because firstly, he is not admitting that Krishan Kumar Bhatia is owner. Secondly, he is stating himself as owner on the basis of Will. Therefore, the pleas taken by the defendant are mutually destructive. The mere fact that the proprietorship firm is in the

name of the defendant will not make him owner of the shop. There is no dispute regarding the business of the firm in this suit. Therefore, the Courts below have correctly appreciated the evidence on record. The findings given by the Courts below are concurrent. No evidence has been shown to this Court which has been misread by the Courts below. There is nothing also on the record to show that as to how the findings are perverse. The suit for mandatory injunction is maintainable because the appellant-defendant is licensee in the shop in dispute and the licence has been duly cancelled.

Further, I find that no substantial question of law arises in this regular second appeal. The judgments and decrees passed by the Courts below are correct, as per evidence and law which do not require any interference from this Court and the same are upheld.

Consequently, finding no merit in the regular second appeal, the same is dismissed.

July 28, 2015.

(Inderjit Singh)
Judge

hsp