

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

**RSA No.2974 of 2014 (O&M)
Date of decision: 30.01.2015**

Sudhir Kumar ... Appellant

Vs.

Sunil Kumar Verma and others ... Respondents

RSA No.3991 of 2014 (O&M)

Rajiv and another ... Appellants

Vs.

Sunil Kumar Verma and another ... Respondents

RSA No.4100 of 2014 (O&M)

Rajiv and another ... Appellants

Vs.

Sunil Kumar Verma and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Tribhawan Singla, Advocate
for the appellant(s).

AMIT RAWAL J.

This order shall dispose of three regular second appeals
i.e. RSA Nos.2974, 3991 and 4100 of 2014. For deciding the matters
in controversy, the facts being common are being taken from RSA

No.2974 of 2014.

The regular second appeal bearing No.2974 of 2014 is directed at the instance of appellant/defendant No.3-Sudhir Kumar, RSA No.3991 and 4100 of 2014 are directed at the instance of appellants/defendants No.1 and 2, whereby the suit of the respondent-plaintiff for possession by way of removing the articles of defendants from the back portion of the shop bearing No.C-III/682/1 marked by letters 'ABCD' as shown red colour in the site plan, being part and parcel of one shop bearing M C J No.C-3/681/1, situated in New Sabji Mandi, Jagadhari, has been partly decreed and the appellants-defendants have been restrained from dispossessing the plaintiff from the disputed portion shown as 'CDEF' as per the site plan Ex.P5 and the relief of injunction and possession qua portion 'ABCD' shown in the site plan Ex.P5 was declined. The appeal filed by the respondent-plaintiff against the aforesaid judgment and decree was dismissed.

It would be relevant to narrate few facts which are essential and necessary for the adjudication of the regular second appeals. The plaintiff's case was that Shakuntala widow of Brij Lal grandmother of defendants No.1 and 2 and mother of defendant No.3 was owner in possession of one shop consisting of two portions measuring East 10'-10", West 10'-10", North 24'-4" and South 24'-4", which was sold to Sunita Rani and physical possession was handed over to her. Sunita Rani further sold this land to the respondent-

plaintiff vide registered sale deed No.1277 dated 7.6.2002 and possession thereof was also handed over. Thus, she became owner in possession of the same. Respondent-plaintiff alleged that property sold by Sunita Rani was bounded as under:-

“East (10’-10”) Property of Sudhir Kumar;

West (10’-10”) Road

North (24’-4”) Property of Sudhir Kumar

South (24’-4”) Property of Shadi Lal”

It was averred that name of Sunita Rani was also reflected in the house tax register and after the purchase, respondent-plaintiff was recorded as owner in possession and thereafter, started his business in the same. It is further averred since the shop consisted of two portions and there was an opening at point 'GH' which was used by the previous owner and then by the plaintiff for connecting both the portions, even STD PCO was also installed in the said shop.

It was further averred that all the defendants colluded with each other and threatened the plaintiff to return the property but he did not listen to them, on this the defendants got annoyed and filed false and frivolous petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, without submitting any site plan against the plaintiff and two other persons for ejectment from one shop measuring 8’-6” x 8’-6”. Though according to the plaintiff, no such shop of aforementioned measurement existed in new Sabji

Mandi Jagadhari.

The plaintiff further alleged that he did not open a shop from 22.10.2004 to 24.10.2004 and when he opened his shop on 25.10.2004, he saw that defendants had illegally taken the possession of the suit land and constructed a wall between point 'GH' by making two opening in their residential house and also dispossessed the plaintiff from portion shown as 'ABCD' by merging the disputed portion.

The said suit was contested by the appellant-defendants by filing common written statement and contested suit by stating that they have been using the suit land since time of their forefathers and the plaintiff had no concern with the suit land. It was further stated that earlier total property 'ABEF' as depicted in the plaintiff's site plan was owned by Brij Lal who executed a Will dated 6.8.1981 in favour of appellant/defendants No.1 and 2 in lieu of the services given by them and the Will was executed with regard to property marked as 'CDEF'. It was further averred that Sunita Rani in collusion with her husband by taking advantage of the possession manipulated the sale deed, which is nothing but a result of fraud. It was also submitted that shop marked as 'CDEF' was owned by defendant No.1 and property marked as 'ABCD' was owned by Brij Lal which was inherited by his three sons and Vipin Kumar one of the sons executed a relinquishment deed dated 28.01.2003 registered on 04.02.2003 in favour of defendant No.3, therefore, portion 'ABCD' was owned by

defendant No.3 and also, there was no door in existence in the Wall 'AB' or wall 'CD'.

Defendants also denied the boundaries and measurement and stated that on the eastern side of the property is the property of Shadi Ram and there was no property of the appellant-defendants as depicted in the plaint. Defendants further submitted that municipal record was wrong and the plaintiff, was in possession of portion 'CDEF', as a sub tenant and denied that there exists any opening on the point 'GH' and wall 'CD' is a solid wall and contains no doors or windows. Defendants also denied that portion 'ABCD' is connected with 'CDEF' in any manner.

Before the trial Court, parties led evidence in support of their respective cases and also brought on record the documentary evidence. Learned trial Court after appreciating the oral and documentary evidence, disbelieved the Will set up by the defendants and also declined the relief sought by the respondent-plaintiff in respect of the portion marked as 'ABCD', on the premise that vendor of the plaintiff stated that the measurement had wrongly been mentioned due to typographical error in the sale deed and she further stated that she had no concern with the said room, thus, granted the injunction in favour of the respondent-plaintiff qua portion marked 'CDEF' in site plan Ex.P5 and restrained the defendants from interference. In essence of relief of possession with regard to portion 'ABCD' was declined.

Since both the parties were aggrieved from the aforementioned judgment and decree and the plaintiff filed appeal bearing No.105 of 2009 whereas defendants No.1 and 2 filed the cross-objection bearing No.106 of 2009.

The lower Appellate Court after noticing the fact that defendant No.3-Sudhir Kumar had instituted the civil suit No.119 dated 9.4.2008 claiming declaration of ownership over the suit property which was later on withdrawn by Sudhir Kumar owing to the fact that trial Court had decided the controversy vide judgment and decree dated 26.02.2009 and thus, formed an opinion that defendant No.3 did not raise the controversy with regard to ownership much less execution of the sale deed which were to be adjudicated by the Civil Court. As litigations at the instance of the defendants were withdrawn by them on one pretext or the other. In the said suit, joint written statement was filed by respondents No.1 to 4 therein and at that time respondents Inder Raj, Ramesh @ Bittu, Rajinder Kumar and Sunita Rani took a U turn that Sunita Rani was owner in possession of the shop only towards the eastern side.

Defendants before the lower Appellate Court laid emphasis upon Ex.D17 i.e. written statement filed in Civil Suit No.130 of 19.4.2008 at the instance of Sunita Rani, wherein it has conveniently been pleaded that the measurement mentioned in the sale deeds had been written inadvertently due to typographical mistake by the Deed Writer. Deed Writer of both the sale deeds and the attesting

witnesses were not cross-examined with regard to the description or particulars mentioned in the sale deeds, in other words, “whether there was any error in the description of the property or not”?

On the basis of the aforementioned evidence, the lower Appellate Court decreed the appeal of the respondent/plaintiff in *toto* i.e. granted the relief of possession with regard to portion ‘ABCD’ mentioned in the site plan Ex.P5 and dismissed the cross objections filed by defendants No.1 and 2.

Against the judgment and decree dated 01.05.2014 of the lower Appellate Court, aforementioned three regular second appeals have been filed.

Mr. Tribhawan Singla, learned counsel for the appellants/defendants in support of his grounds of appeal has raised the following submissions:-

- i) *The description given in the site plan Ex.P5 was not correct and the finding rendered by the trial Court with regard to portion 'ABCD' was legal, just and fair. Thus, the lower Appellate Court has committed illegality and perversity in setting aside the judgment and decree of the trial Court while granting the relief of possession in respect of portion 'ABCD' as the vendor of the respondent/plaintiff unequivocally admitted that there was an error in the measurement given in the sale deeds and description of the property was incorrect. By virtue of the*

sale deed dated 07.06.2002, plaintiff-respondent acquired the ownership of the property.

In support of his submission, he relied upon Ex.D17, copy of written statement filed in the previous suit filed by Sunita Rani. He further submitted that in suit no.130 of 2008, the present plaintiff was defendant No.5 and Sunita Rani, vendor of the plaintiff was defendant No.4 and in Ex.D17 (written statement), Sunita Rani had categorically admitted that she only purchased the property towards eastern side of defendants and the measurement given in the sale deed were wrong as she had no concern with the room situated eastern side of the shop in question. She further stated that she had never been in possession of the same and this fact was disclosed to the respondents/plaintiffs.

I have heard learned counsel for the appellant-defendants and appraised the impugned judgments and decrees of the Courts below and is of the view that the argument of the learned counsel for the appellant-defendants sans merit and is hereby repelled.

Written statement filed by the vendor of the respondent-plaintiff in earlier suit i.e. Civil Suit No.130/19.4.2008 would not be credible to form an opinion regarding the description of the property sold by Sunita Rani, vendor of the plaintiff-respondent. The respondent-plaintiff in the present suit examined the deed writer of both the sale deeds i.e. 15.6.1990 and 7.6.2002. For the reasons, best known to the witnesses were not cross-examined by the

appellant-defendants regarding the description or the particulars mentioned in the sale deeds or whether there was any error or mistake. Deed writers were only cross-examined as to whether No.C-III/682/1 was written on the said document or not. The defendants even failed to put any question to the aforementioned witnesses with regard to the dimensions mentioned in the sale deeds.

It would not be out of place to mention here that the attesting witnesses have also been examined by the respondent-plaintiff. They also stated in examination-in-chief with regard to description of the property but the defendants failed to cross-examine the aforementioned witnesses on this aspect.

It is settled proposition of law, that in the absence of cross-examination, the contents of examination-in-chief deemed to be admitted, in view of the judgment of this Court in **Mahant Mela Ram vs. Shiromani Gurdwara Parbandhak Committee, Amritsar, 1992 AIR (Punjab) 252.**

Even on the perusal of the grounds of appeal, the appellant-defendants have not even challenged the findings of the lower Appellate Court with regard to the non cross-examination of the Deed Writer and attesting witnesses of the sale deeds.

The lower Appellate Court while allowing the appeal of the respondent-plaintiff held as under:-

“22. In view of the afore discussed, it becomes crystal

clear that there is no ambiguity with regard to descriptions of the suit property by way of boundary mentioned in sale deed Ex.P1 and Ex.P3 and the site plan appended to the sale deeds which are Ex.P2 and Ex.P4, respectively. Ex.P5 is also based upon the site plans Ex.P2 and Ex.P4 as well as recitals in the sale deeds. It has been specifically mentioned in the sale deed Ex.P1 that the shop which was being sold to Shankutla Devi was in two parts. Respondents have, thus, failed to prove that the sale deed in favour of the appellant was only in respect of portions marked with letters CDEF.

26. In view of the afore discussed, since sale deeds have been duly proved by the appellant and hence, each and every recital in the sale deed has been proved and thus, the appellant is proved to be owner of the suit property. Thus, the appellant is proved to be owner of the suit property and as per the recital of possession having been delivered to him is also thus, proved. In the given circumstances, onus shifted upon the respondents to prove as to in which capacity they are in possession of the portion marked with letters ABCD and as to how and when they had dispossessed the appellant from the suit property. Entry in the municipal record in the form of

Ex.D8 and Ex.D9 showing the appellant to be owner of plot measuring 07 sq. yards i.e. 64 sq.feet would not mean that appellant is not owner of the suit property. As it is, Ex.D8 and Ex.D0 which are copies of assessment register of municipal council are no record to prove title of immovable property. Title in favour of the appellant is duly proved from the sale deed dated 7.6.2002. The appellant, however, in order to prove his case that he had been dispossessed from the said portion during the period 22.10.2004 to 24.10.2004 when he kept his shop closed examined himself. Appellant has also examined a witness in this regard. The appellant himself has also stepped into witness box that he has been dispossessed from part of the suit property i.e. area marked with letters ABCD by constructing a wall marked with letters GH. The appellant has sought the relief that respondents be directed to close two doors at points D-1 and D-2 but there is a report of Local Commissioner on record that there exists only one door of wood in back portion which is in the use of respondent No.3. Thus, there is no such evidence on record to show the existence of two doors as alleged. However, keeping in view the above discussed wherein the appellant has been able to prove that he is owner of property marked with letters CDEF by virtue of sale deed

dated 7.6.2002 and therefore, he is entitled to permanent injunction restraining the respondents from interfering in his possession over the same. As regards the portion ABCD, the same is also under the ownership of the appellant by virtue of sale deed dated 7.6.2002 and therefore, he is entitled to possession of this portion since he has been dispossessed from the same. Respondents are thus, directed to hand over the vacant possession of this portion to the appellant within a period of two months from today. In this situation, where appellant is entitled to possession of the entire suit property, his relief asked for removal of doors as alleged or wall marked with letters GH become inconsequential. Accordingly, appeal filed by appellant Sunil Kumar (plaintiff) is accepted whereas cross objections/appeal filed by the respondents are dismissed. Decree sheet be drawn accordingly. A copy of judgment be placed on the file of cross objections/appeal filed by the respondents. Lower Court record be remitted. After due compliance, appeal files be consigned to records.”

On perusal of the finding rendered by the lower Appellate Court, it is evident that there is no illegality and perversity in the findings as the same are based on appreciation of both oral and documentary evidence. Defendants have miserably failed to prove

the description of the property given in the sale deeds was incorrect.

In view of the observations made herein above, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeals are dismissed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

January 30, 2015
savita