

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.567 of 2014 (O & M)

Date of Decision: *November 11, 2015*

Jeet Pal

..... APPELLANT

VERSUS

Satish Kumar @ Mehnga Singh & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

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?

...

PRESENT: - Mr. Kartik Gupta, Advocate, for the appellant.

. . .

Jaspal Singh, J

1. The instant appeal has been preferred by defendant No.1 – Jeet Pal challenging judgment and decree dated February 02, 2011 passed by the trial court as well as judgment & decree dated August 02, 2013 by passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and two separate appeals filed by the defendants against the judgment & decree passed by the trial court have been dismissed. Accordingly, the suit filed by plaintiff for recovery of ₹ 1 lac as mesne profits (for occupation & use) for the period from September 10, 2001 to September 09, 2004, has been decreed holding that plaintiffs are entitled to

recover mesne profits @ ₹ 1,500/- per month for the aforesaid period which comes to ₹ 54,000/- alongwith interest @ 6% per annum.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellant that the courts below have totally ignored the fact that appellant – defendant is the exclusive owner in possession of property in suit which has been purchased by him on the basis of registered sale deed dated September 15, 1973 (Ex.D1). Otherwise also, this fact stands duly proved by Deed Writer – Jeet Singh (DW-1) who has produced on record extract of Deed Writers' Register (Ex.D2) whereby he incorporated an entry at Serial No.1170 dated September 15, 1973 in his register. Attesting witnesses of the sale deed have also corroborated the version unfolded by the appellant – defendant.

3. It has further been contended by learned counsel for the appellant that even Rattan Singh , DW-3, has been examined by the appellant – defendant who has placed and proved on record copy of assessment register of Ward No.3 pertaining to the shop in question whereas respondent No.8 (Hardeep Singh) has been recorded as a tenant under him. Thus, possession of the appellant – defendant over the shop cannot be termed to be illegal. So, the findings recorded by the trial court and upheld by the lower appellate court are absolutely against the documents available on file, and the plaintiffs – respondents are not entitled to mesne profits awarded by the trial court and upheld by the lower appellate court. Similarly, trial court has fell in error while observing that construction of the shop over the plot has not been raised by the appellant – defendant. In this regard, DW-2 Jawahar Lal has categorically deposed on oath that shop in question

lac. His testimony further finds corroboration from the statement of appellant – defendant who appeared in the witness box as DW-4. Similarly, respondent No.8, while appearing in the witness box as DW-5 has further corroborated the version of appellant – defendant as well as that of Jawahar Lal, DW-2, who has categorically deposed that construction of the shop was raised by the appellant – defendant. Thus, in view of the oral as well documentary evidence, it was abundantly clear that construction of the shop in question was raised by the appellant – defendant and further that he is owner of the said property which dis-entitles the plaintiffs – respondents from claiming any mesne profit.

4. It has further been contended by learned counsel for the appellant that even the assessment of mesne profits @ ₹ 1,500/- per month is on the basis of conjectures and surmises. No documentary evidence has been brought on record showing the payment of rate of rent @ ₹ 1,500/- by any tenant in the locality where shop in question is situated. DW-6 Kimti Lal, who is proprietor of the shop situated just opposite the shop in question, has also deposed on oath that he has taken a shop on rent from one Harbans Singh @ ₹ 45/- per month and has also tendered into evidence receipt Ex.DW6/A. Similarly, respondent No.8 Hardeep Singh (defendant No.2) has also appeared in the witness box as DW-5 who has also placed on record receipt Ex.DW4/A and Ex.DW4/B showing the rate of rent @ ₹ 425/- per month. Thus, the findings recorded by the courts below even with regard to assessment of mesne profits being based upon conjectures and surmises are liable to be set aside by way of acceptance of the instant appeal. Consequently, suit of the plaintiffs – respondents is liable to be dismissed, that too, with special costs.

5. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant but finds the same to be without any substance.

6. Undeniably, plaintiff – Kasturi Lal had earlier filed a suit against defendant No.1 which was decreed vide judgment & decree dated November 26, 1981, vide which, he was declared to be owner in possession of the property which is subject matter of the instant lis. Aggrieved by the said judgment & decree, defendant preferred an appeal before learned District Judge, Hoshiarpur but that appeal was also dismissed. Thus, the entire controversy revolves around judgment & decree dated November 26, 1981 passed in suit filed by the present plaintiff – Kasturi Lal (since deceased) for possession over the suit property. In the said suit, present appellant – Jeet Pal had also taken specific plea that the property which Kasturi Lal, predecessor-in-interest of the present plaintiffs was claiming to be a part of plot No.B-XI-SI/34 falling in Khasra No.188 which was purchased from one Sunder Singh and in the said suit, Kasturi Lal was held to be owner of the suit property vide judgment & decree dated November 26, 1981. No doubt, appellant – defendant No.1 has placed on record the sale deed to prove his ownership over the disputed property but that sale deed was executed during the pendency of previous litigation between the parties. No attesting witness of the sale deed has also been examined by the appellant – defendant to prove the due execution of sale deed pertaining to the year 1973. Judgment & decree dated November 26, 1981 in unambiguous terms establishes that Kasturi Lal is owner of the property in dispute which is admittedly in possession of the defendant(s). Thus, it can be safely concluded that possession of the appellant – defendant being

7. As far as quantum of mesne profits is concerned, there are concurrent findings of both the courts below which cannot be interfered with by this Court. Here, it would be out of place to mention that there is nothing on the record to suggest that as to why the appellant – defendant did not take any step on the basis of the sale deed. Since 1973, the matter was also subjudice before the civil court when he allegedly purchased the shop in dispute. It appears that though the sale deed was got executed by the appellant – defendant but it was not acted upon. Moreover, the judgment & decree passed by the civil court has to prevail, especially in the circumstances that the sale deed, if any, in favour of the appellant – defendant is hit by the doctrine of lis-pendence.

8. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings of the courts below, either with regard to ownership of the property in suit or assessment of the mesne profits. Thus, findings recorded by the courts below are affirmed. Consequently, the instant appeal being devoid of merits is dismissed with no order as to costs.

November 11, 2015
avin

(Jaspal Singh)
Judge