

**113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No. 971 of 2014 (O&M)
Decided on : 15.9.2015**

Mohan Lal

...Appellant

Versus

Jagdish Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ish Puneet Singh, Advocate,
for the appellant.

K. C. PURI, J.

CM No. 2238-C of 2014

There is delay of 83 days in filing the present appeal.

For the reasons mentioned in the application, the same stands allowed
and the delay in filing the appeal stands condoned.

Main case

The plaintiff-appellant has directed this appeal
against the judgment and decree dated 1.6.2013 passed by Sh. S.S.
Panesar, Additional District Judge, Ludhiana, vide which the appeal
preferred by the plaintiff was dismissed and the judgment and decree
dated 20.7.2009 passed by Sh. Balwant Singh, PCS, Civil Judge

(Junior Division), Ludhiana were upheld and the suit of the plaintiff remained dismissed.

The facts of the case are that the plaintiff-appellant filed suit for permanent injunction restraining the respondents from dispossessing him from disputed property fully detailed in the head note of the plaint forcibly except in due course of law. It was pleaded that the plaintiff was inducted as tenant over the demised property at the rent of Rs.20/- per month. The plaintiff has been regularly paying the rent to defendant No.1 but defendant No.1 did not issue any receipt. The plaintiff came to know that defendant No.1 has entered into an agreement to sell in favour of defendants No.2 & 3. No ejectment order has been passed against the plaintiff. Defendant No.1 has transferred the demised property in favour of defendant No.4 who is wife of defendant No.2 vide sale deed dated 7.2.1990. Hence, the suit.

Upon notice, all the defendants appeared and contested the suit. Defendant No.1 filed a separate written statement while defendants No.2 & 3 filed a joint written statement whereas defendant No.4 after being added as a party filed separate written statement.

Defendant No.1 took preliminary objection that suit is false and frivolous. On merits, tenancy of plaintiff over some portion of land was admitted. Agreement to sell in favour of defendants No.2 & 3 was also admitted. Remaining allegations were denied.

Defendants No.2 & 3 filed joint written statement. It

was filed on the similar lines as that of defendant No.1.

Defendant No.4 in her written statement has taken preliminary objections that plaintiff has no locus standi and cause of action, the suit is hit by the doctrine of res-judicata. The plaintiff has not approached the court with clean hands. The true facts are that defendant No.4 had obtained possession on 1.7.1993 from Iqbal Singh JD. The plaintiff is fighting proxy battle for Iqbal Singh who is being kept behind the scene. On merits, the factum of tenancy was denied. In fact, Iqbal Singh was tenant in one room of the land at the rent of Rs.30/- per month. Remaining allegations made in the plaint were denied.

The plaintiff filed replication controverting the allegations made in the written statement while reiterating the facts as stated in the plaint.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for ?OPP
2. Whether plaintiff approached the Court with unclean hands and after suppressing the facts ?OPD
3. Whether the plaintiff has no locus standi to file present suit ?OPD
4. Whether the suit is not maintainable ?OPD
5. Whether the suit is nothing but an abuse of the

process of Court ?OPD

6. Whether plaintiff is estopped by his act and conduct ?OPD

7. Whether plaintiff has no cause of action to file present suit ?OPD

8. Whether suit is hit by doctrine of res-judicata ?
OPD

9. Whether the suit of plaintiff cannot proceed during the pendency of suit ?OPD

10. Relief.

Both the parties led their respective evidence on the aforesaid issues. The learned trial court, after appraisal of the evidence, vide judgment and decree dated 20.7.2009 dismissed the suit of the plaintiff.

Feeling dissatisfied with the above said judgment and decree dated 20.7.2009, the plaintiff filed appeal which was dismissed vide judgment and decree dated 1.6.2013 passed by Sh. S.S. Panesar, Additional District Judge, Ludhiana.

Still feeling aggrieved, with the aforesaid judgments and decrees dated 20.7.2009 and 1.6.2013, the plaintiff-appellant has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no.8 of the grounds of appeal has mentioned that following substantial questions

of law have arisen in the instant appeal :-

- 1) Whether the records produced by the appellant/plaintiff showing his possession over the property in dispute from the last 20 years can be ignored in the facts and circumstances of the case?
- 2) Whether a decree of injunction ought to have been granted in favour of the appellant/plaintiff, once the possession of the appellant/plaintiff has been established and no legal course of his dispossession has been pleaded ?
- 3) Whether a decree of injunction ought to have been granted in favour of the appellant/plaintiff, once the landlord-tenant relationship had been accepted by the respondents ?
- 4) Whether a collusive eviction decree which has been obtained without information of the plaintiff with a third party would be a relevant factor for denying the injunction in favour of the appellant/plaintiff ?
- 5) Whether the impugned judgments and decree passed by the learned Courts below are wrong, illegal and against law and facts ?

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

This is a mere suit for permanent injunction and the plaintiff can succeed only if he is able to prove that he is in possession of the suit property on the date of filing the suit. There is a concurrent

finding of fact recorded by both the Courts below that plaintiff has not been able to prove the possession over the suit property. The said finding is based upon documentary as well as oral evidence. The eviction petition against Iqbal Singh was filed and possession of the premises was handed over to defendant in those execution proceedings so much so the plaintiff himself moved an application for handing over the articles recovered from the spot. Virtually, the possession of defendant No.4 is admitted by filing that application. Of course, that application was dismissed.

The regular second appeal lies only if there is a substantial question of law . In the present case, there is a factual dispute regarding possession and there is a concurrent finding that plaintiff has failed to prove his possession over the suit property on the date of filing the suit. So, in these circumstances, I have no hesitation in holding that no substantial question of law has arisen in the present regular second appeal. The questions mentioned by the appellant in paragraph No.8 of the grounds of appeal do not exist. Consequently, the appeal is without any merit and the same stands dismissed.

15.9.2015
SN

(K.C.PURI)
JUDGE